

UNOFFICIAL COPY

COOK COUNTY, ILLINOIS
FILED FOR RECORD

9 0 5 2 5 461

Recording Requested By and
When Recorded Mail To:
Great Northern Insured Annuity
Corporation
P.O. Box 490
Seattle, Washington 98111-0490
GNA Loan No. 1273

1990 OCT 29 PM 1:44

90525461

MORTGAGE, SECURITY AGREEMENT AND FIXTURE FINANCING STATEMENT

40⁰⁰

THIS MORTGAGE, SECURITY AGREEMENT AND FIXTURE FINANCING STATEMENT (this "Mortgage") is made this 26th day of October, 1990, between COMMERCIAL NATIONAL BANK OF BERWYN, not personally, but solely as Trustee pursuant to the provisions of a Trust Agreement dated December 2, 1986, and known as Trust Number 860970 ("Mortgagor"), whose address is 3322 South Oak Park Avenue, Berwyn, Illinois 60402 and GREAT NORTHERN INSURED ANNUITY CORPORATION, a Washington corporation, as Mortgagee, whose address is P.O. Box 490, Seattle, Washington 98111-0490.

Mortgagee is making a loan (the "Loan") in the principal amount of One Million, Seven Hundred and Forty Three Thousand, Seven Hundred and Fifty and no/100 (\$1,743,750.00) Dollars to be secured in part by that certain real property (the "Realty") described in Exhibit A attached hereto. The Loan, if not sooner paid, is due and payable in full on November 1, 2000. The terms of the Loan provide for: (i) Adjustment of the interest rate on the fifth Anniversary Date as defined in the Promissory Note evidencing the Loan ("Note") and on each succeeding Anniversary Date until the Loan is paid in full, with adjustments to be calculated using a formula based upon the Moody's A Corporate Bond Index Daily Rate (or a successor or comparable index, upon the circumstances provided in said Note); and (ii) adjustment in the amount of installment payments to reflect interest rate adjustments. A copy of the Note is attached hereto as Exhibit "B".

In consideration of the Loan and the sum of One and No/100 Dollars (\$1.00) in hand paid by the Mortgagee, the receipt of which is hereby acknowledged, and to secure the payment of the principal and interest and premium, if any, on the Note according to its tenor and effect and to secure payment of all other indebtedness secured hereby and the performance and observance of all the covenants, provisions and agreements herein and in the Note contained (whether or not the Mortgagor is personally liable for such payment, performance and observance) Mortgagor does hereby MORTGAGE, GRANT, BARGAIN, SELL AND CONVEY unto to Mortgagee, its successors and assigns, forever, AND GRANT TO THE MORTGAGEE A SECURITY INTEREST IN, all of Mortgagor's estate, rights, title, claim, interest and demand, either in law or in equity, of, in and to the following property, whether the same be now owned or hereafter acquired (the "Property"):

- (a) The Realty and all rights to the land lying in alleys, streets and roads adjoining or abutting the Realty;
- (b) All buildings, improvements and tenements now or hereafter located on the Realty;

72-78-817 - #

90525461

UNOFFICIAL COPY

101-35000

101-35000

Property of Cook County Clerk's Office

101-35000

(c) All fixtures and articles of property now or hereafter attached to, or used or adapted for use in the ownership, development, operation or maintenance of, the buildings, improvements and Realty (whether such items be leased, be owned absolutely or subject to any title retaining or security instrument, or be otherwise used or possessed), including without limitation all heating, cooling, air-conditioning, ventilating, refrigerating, plumbing, generating, power, lighting, laundry, maintenance, incinerating, lifting, cleaning, fire prevention and extinguishing, security and access control, cooking, gas, electric and communication fixtures, equipment and apparatus, all engines, motors, conduits, pipes, pumps, tanks, ducts, compressors, boilers, water heaters and furnaces, all ranges, stoves, disposers, refrigerators and other appliances, all escalators and elevators, all baths and sinks, all cabinets, partitions, mantels, built-in mirrors, window shades, blinds, screens, awnings, storm doors, windows and sash, all carpeting, underpadding, floor covering, panelling and draperies, all furnishings of public spaces, halls and lobbies, and all shrubbery and plants; all of which items shall be deemed part of the real property and not severable wholly or in part without material injury to the freehold; provided, however, that personal property and trade fixtures owned or supplied by tenants of the Property with the right of removal at the termination of their tenancies shall not be included within the scope of this paragraph;

(d) All easements, all access, air and development rights, all minerals and oil, gas and other hydrocarbon substances, all royalties, all water, water rights and water stock, and all other rights, hereditaments, privileges, permits, licenses, franchises and appurtenances now or hereafter belonging or in any way appertaining to the Realty;

(e) All of the rents, revenues, issues, profits and income of the Property, and all right, title and interest of Mortgagor in and to all present and future leases and other agreements for the occupancy or use of all or any part of the Realty, and all right, title and interest of Mortgagor thereunder, including without limitation all cash or security deposits, advance rentals and deposits or payments of similar nature; SUBJECT, HOWEVER, to the assignment of rents and other property to Mortgagee herein contained; and

(f) All awards, compensation and settlements in lieu thereof made as a result of the taking by power of eminent domain of the whole or any part of the Property including any awards for damages sustained to the Property for a temporary taking, change in grade of streets or taking of access.

TO SECURE THE FOLLOWING (collectively the "Secured Obligations"):

(1) Payment of the sum of One Million, Seven Hundred and Forty Three Thousand, Seven Hundred and Fifty and no/100 (\$1,743,750.00) Dollars with interest thereon, according to the terms and provisions of the Note and all modifications, extensions, renewals and replacements thereof (collectively the "Note");

(2) Payment of all sums advanced to protect the security of this Mortgage, together with interest thereon as herein provided;

(3) Payment of all other sums which are or which may become owing under the Loan Documents;

(4) Performance of all of Mortgagor's other obligations under the Loan Documents; and

(5) Payment of the principal and interest on all other future loans or advances made by Mortgagee to Mortgagor when the promissory note evidencing the loan or advance specifically states that it is secured by this Mortgage, including all modifications, extensions, renewals, and replacements of any such future loan or advance.

UNOFFICIAL COPY

9 0 5 2 5 4 6 1

However, the maximum amount secured by this Mortgage shall not exceed Fifty Million and no/100 Dollars (\$50,000,000.00).

As used herein, the term "Loan Documents" means the Note, this Mortgage, any loan agreement and Uniform Commercial Code Financing Statement executed in connection herewith, and any other instrument or document evidencing or securing the Loan or otherwise executed in connection therewith, together with all modifications, extensions, renewals and replacements thereof.

MORTGAGOR HEREBY REPRESENTS, WARRANTS, COVENANTS AND AGREES AS FOLLOWS:

ARTICLE 1 TITLE AND USE

1.1 Warranty of Title. Mortgagor represents and warrants to Mortgagee: (a) That, except as may otherwise be expressly stated in this Mortgage, Mortgagor has good and marketable title in fee simple to such of the Property as is real property and is the sole and absolute owner of all other Property; (b) that the Property is free from liens, encumbrances, exceptions or other charges of any kind whatsoever other than non-delinquent installments of ad valorem property taxes and special assessments, the "Permitted Exceptions," if any, permitted by Mortgagee pursuant to any policy of title insurance issued to it in connection with this or any other mortgage referred to in Article 10 herein below with respect to the Property and any other liens, encumbrances, exceptions or charges expressly permitted by the terms of this Mortgage, and no others, whether superior or inferior to this Mortgage, will be created or suffered to be created by Mortgagor during the life of this Mortgage without the prior written consent of Mortgagee; (c) that no default on the part of Mortgagor or, to the best of Mortgagor's knowledge, any other person exists under any of the Permitted Exceptions and as applicable all are in full force and effect and in good standing, without modification; and (d) that Mortgagor has the right to grant, transfer, convey and assign the Property as herein provided and will forever warrant and defend the Property unto Mortgagee against all claims and demands of any other person whomsoever, subject only to said non-delinquent installments of taxes and assessments and Permitted Exceptions.

1.2 Hazardous Substances.

(a) Representations and Warranties. Mortgagor hereby represents and warrants to Mortgagee: (i) That, to the best of Mortgagor's knowledge, no asbestos has ever been used in the construction, repair or maintenance of any building, structure or other improvement now or heretofore located on the Property; (ii) that no Hazardous Substance is currently being generated, manufactured, refined, transported, treated, stored, handled or disposed of, transferred, produced or processed on, under or in the Property, except in compliance with all applicable federal, state and local statutes, ordinances, rules, regulations and other laws; (iii) that neither Mortgagor nor, to the best of Mortgagor's knowledge, any other person or entity has ever caused or permitted any Hazardous Substance to be generated, manufactured, refined, transported, treated, stored, handled or disposed of, transferred, produced or processed on, under or in the Property, except in compliance with all applicable federal, state and local statutes, ordinances, rules, regulations and other laws; (iv) that Mortgagor has not received any notice of, nor is Mortgagor aware of, any actual or alleged violation with respect to the Property of any federal, state or local statute, ordinance, rule, regulation or other law pertaining to Hazardous Substances; and (v) that neither Mortgagor nor the Property is subject to any governmental or judicial claim, order, judgment or lien with respect to the clean-up of Hazardous Substances at or with respect to the Property. Mortgagor further represents and warrants to Mortgagee that the foregoing representations and warranties contained in this

90525461

paragraph 1.2(a) are made after and are based upon inspection of the Property by Mortgagor and due inquiry by Mortgagor as to the prior uses of the Property.

(b) Definition. As used herein, the term "Hazardous Substance" means any hazardous, toxic or dangerous substance, waste or material which is or becomes regulated under any federal, state or local statute, ordinance, rule, regulation or other law now or hereafter in effect pertaining to environmental protection, contamination or clean up, including without limitation any substance, waste or material which now or hereafter is (A) designated as a "hazardous substance" under or pursuant to the Federal Water Pollution Control Act (33 U.S.C. § 1257 et seq.), (B) defined as a "hazardous waste" under or pursuant to the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.), or (C) defined as a "hazardous substance" in (or for purposes of) the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601 et seq.).

ARTICLE 2 MORTGAGOR'S COVENANTS

2.1 Payment and Performance of Secured Obligations. Mortgagor will pay when due all sums which are now or which may become owing on the Note, and will pay and perform all other Secured Obligations, in accordance with their terms.

2.2 Payment of Taxes, Utilities, Liens and Charges.

(a) Taxes and Assessments. Except as the same may otherwise be paid under Article 3 relating to reserves, Mortgagor will pay when due directly to the payee thereof all taxes and assessments (including without limitation non-governmental levies or assessments such as maintenance charges, owner association dues or charges, or fees, levies or charges resulting from covenants, conditions or restrictions) levied, assessed or charged against or with respect to the Property or this Mortgage. Upon request, Mortgagor shall promptly furnish to Mortgagee all notices of amounts due under this subparagraph and all receipts evidencing such payments.

(b) Utilities. Mortgagor will pay when due all utility charges and assessments for services furnished the Property.

(c) Liens and Charges. Mortgagor will pay when due the claims of all persons supplying labor or materials to or in connection with the Property. Without waiving the restrictions of paragraph 4.1, Mortgagor will promptly discharge any lien or other charge, whether superior or inferior to this Mortgage, which may be claimed against the Property.

2.3 Insurance.

(a) Coverages Required. Mortgagor will keep the following insurance coverages in effect with respect to the Property:

(i) Insurance against loss by fire and the hazards now or hereafter embraced by the standard "extended coverage" form of insurance, in an amount equal at all times to the full insurable value of the improvements then located on the Property. All such insurance coverage shall contain a "replacement cost endorsement" satisfactory to Mortgagee.

UNOFFICIAL COPY

and this is the only copy of the original.

next page to the original copy of the
document. The original copy of the
document is the only copy of the
document. The original copy of the
document is the only copy of the
document. The original copy of the
document is the only copy of the
document.

error do not return to the
board of directors.

document is the only copy of the
document. The original copy of the
document is the only copy of the
document. The original copy of the
document is the only copy of the
document. The original copy of the
document is the only copy of the
document.

original of the document is the only copy of the
document.

original of the document is the only copy of the
document. The original copy of the
document is the only copy of the
document. The original copy of the
document is the only copy of the
document. The original copy of the
document is the only copy of the
document.

original of the document is the only copy of the
document.

original of the document is the only copy of the
document. The original copy of the
document is the only copy of the
document. The original copy of the
document is the only copy of the
document. The original copy of the
document is the only copy of the
document.

Property of Cook County Clerk's Office

10/15/2000

(ii) Flood risk insurance in the maximum amount of insurance coverage available or the full replacement cost of the buildings on the Realty, whichever is less, if the Realty is now or hereafter designated as being located within a special flood hazard area under the Flood Disaster Protection Act of 1973 and if flood insurance is available.

(iii) Loss of rental value insurance and/or business interruption insurance, as follows: If all or any portion of the Property is rented or leased, loss of rental value insurance in an amount equal to six (6) months' aggregate gross rents from the Property as is so occupied. If all or any portion of the Property is occupied by Mortgagor, business interruption insurance in an amount equal to six (6) months' net income from such portion of the Property as is so occupied. The amount(s) of such coverage(s) shall be subject to adjustment, from time to time at Mortgagee's request, to reflect changes in the rental and/or income levels during the term of the Loan.

(iv) Comprehensive public liability insurance against claims for bodily injury, death or property damage occurring on, in or about the Property (including coverage for elevators and escalators, if any, on the Property), with the coverage being in an amount of not less than One Million Dollars (\$1,000,000) combined single-limit liability coverage, or in such greater amount(s) as Mortgagee may reasonably require.

(v) Boiler and machinery insurance covering pressure vessels, air tanks, boilers, machinery, pressure piping, heating, air conditioning and elevator and escalator equipment, provided the improvements contain equipment of such nature, and insurance against loss of occupancy or use arising from breakdown of any of such items, in such amounts as Mortgagee may reasonably require.

(vi) Insurance against such similar or other hazards, casualties, liabilities and contingencies, in such forms and amounts, as Mortgagee may from time to time reasonably require.

(b) Policies. Each insurance policy will be in form acceptable to Mortgagee, and will be issued by a company acceptable to Mortgagee, which company shall, among other things, be (i) duly authorized to provide such insurance in the state in which the Property is located, and (ii) rated "A" or better with a size rating of "V" or larger by A.M. Best Company in its most recent publication of ratings (provided, however, that if A.M. Best Company changes its designations, the basis for its ratings or ceases to provide ratings, Mortgagee shall be entitled to select replacement ratings in the exercise of its reasonable business judgment). Each hazard insurance policy will include a Form 438BFU or equivalent mortgagee endorsement in favor of and in form acceptable to Mortgagee, and each liability insurance policy will name Mortgagee as an additional assured. All required policies will provide for at least ten (10) days' written notice to Mortgagee prior to the effective date of any cancellation or material amendment, which term shall include any reduction in the scope or limits of coverage. Mortgagor shall furnish to Mortgagee the complete original of each required insurance policy, or a certified copy thereof together with a certificate of insurance setting forth the coverage, the limits of liability, the carrier, the policy number and the expiration date. As additional security for the Secured Obligations, Mortgagor hereby assigns to Mortgagee all required insurance policies, together with all proceeds thereof, rights thereto and all unearned premiums returnable upon cancellation.

(c) Payment; Renewals. Mortgagor shall promptly furnish to Mortgagee all renewal notices relating to insurance policies. Except as the same may otherwise be paid under Article III relating to reserves, Mortgagor will pay all premiums on insurance policies directly to the carrier. At least thirty (30) days prior to the expiration date of each such policy, Mortgagor shall furnish to Mortgagee a renewal policy in a form acceptable to Mortgagee, together with evidence that the renewal premium has been paid.

UNOFFICIAL COPY

9 0 5 2 5 4 6 1

(d) Insurance Proceeds.

(i) In the event of any loss, Mortgagor will give prompt written notice thereof to the insurance carrier and Mortgagee. Mortgagor hereby authorizes Mortgagee as Mortgagor's attorney-in-fact to make proof of loss, to adjust and compromise any claim, to commence, appear in and prosecute, in Mortgagee's or Mortgagor's name, any action relating to any claim, and to collect and receive insurance proceeds; provided, however, that Mortgagee shall have no obligation to do so.

(ii) Except as may otherwise be required by applicable law, Mortgagee shall apply any insurance proceeds received hereunder first to the payment of the costs and expenses incurred in the collection of the proceeds and shall then apply the balance (the "Net Proceeds"), in its absolute discretion and without regard to the adequacy of its security, to:

(A) The payment of indebtedness secured hereby, whether then due and payable or not. Any such application of proceeds to principal on the Note shall be without the imposition of any prepayment fee otherwise payable under the Note, but shall not extend or postpone the due dates of the installment payments under the Note, or change the amounts thereof; or

(B) The reimbursement of Mortgagor, under Mortgagee's prescribed disbursement control procedures, for the cost of restoration or repair of the Property. Mortgagee may, at its option, condition the reimbursement on Mortgagee's approval of the plans and specifications of the reconstruction, contractor's cost estimates, architects' certificates, waivers of liens, sworn statements of mechanics and materialmen, and such other evidence of costs, percentage completion of construction, application of payments and satisfaction of liens as Mortgagee may reasonably require.

(iii) Notwithstanding the provisions of paragraph 2.3(d)(ii) above, Mortgagee agrees that the Net Proceeds from a loss described in this paragraph 2.3(d) will be made available under clause (ii)(B) above to reimburse Mortgagor for the cost of restoration or repair of the Property, provided that each of the following conditions is satisfied:

(A) No event of default has occurred and is continuing at the time the proceeds are received;

(B) The Net Proceeds are less than the indebtedness then secured by this Mortgage;

(C) The proceeds are received more than one (1) year prior to the maturity date of the Note;

(D) Mortgagor gives Mortgagee written notice within thirty (30) days after the proceeds are received that it intends to restore or repair the Property and requests that the Net Proceeds be made available therefor, and Mortgagor thereafter promptly commences the restoration or repair and completes the same with reasonable diligence in accordance with plans and specifications approved by Mortgagee, which approval shall not be unreasonably withheld;

(E) The Net Proceeds are sufficient, in Mortgagee's reasonable business judgment, to restore or repair the Property substantially to its condition prior to the damage or destruction or, if in Mortgagee's reasonable business judgment they are not, Mortgagor deposits with Mortgagee funds in an amount equal to the deficiency, which funds Mortgagee may, at its option, require be expended prior to use of the Net Proceeds; and

UNOFFICIAL COPY

City of Cook County Clerk's Office
100 North Dearborn Street
Chicago, Illinois 60601
Tel: (773) 304-3000

Official Record of the
County of Cook, Illinois
Recorded on 01/15/2011 at 10:00 AM

Book 1000, Page 1000
This document is a true and correct
copy of the original as filed for
record in the County of Cook, Illinois.

Recorded in the County of Cook, Illinois
on 01/15/2011 at 10:00 AM
by the County Clerk's Office
at the County Clerk's Office
100 North Dearborn Street
Chicago, Illinois 60601

Official Record of the
County of Cook, Illinois
Recorded on 01/15/2011 at 10:00 AM

Official Record of the
County of Cook, Illinois

Official Record of the
County of Cook, Illinois

Official Record of the
County of Cook, Illinois

Official Record of the
County of Cook, Illinois
Recorded on 01/15/2011 at 10:00 AM

Official Record of the
County of Cook, Illinois
Recorded on 01/15/2011 at 10:00 AM

Property of Cook County Clerk's Office

10000000

(F) Mortgagee receives evidence reasonably satisfactory to Mortgagee that, upon completion of the restoration or repair, the Property can be operated substantially as it was before and will produce substantially as much income from tenant leases as it did before the damage or destruction.

(iv) To the extent, if any, that insurance proceeds are applied to payment of the indebtedness secured hereby under clause (ii)(A) above, Mortgagor's obligation to restore, repair and maintain the Property as provided in paragraph 2.4 shall be abated; no other provision of this Mortgage, however, shall be deemed to excuse Mortgagor from restoring, repairing or maintaining the Property as so provided.

(e) Transfer of Title. If the Property is sold pursuant to Article 8 or if Mortgagee otherwise acquires title to the Property, Mortgagee shall have all of the right, title and interest of Mortgagor in and to any insurance policies and unearned premiums thereon and in and to the proceeds resulting from any damage to the Property prior to such sale or acquisition.

2.4 Preservation and Maintenance of Property; Right of Entry.

(a) Preservation and Maintenance. Mortgagor (i) will not commit or suffer any waste or permit any impairment or deterioration of the Property, (ii) will not abandon the Property, (iii) will restore or repair promptly and in a good and workmanlike manner all or any part of the Property to the equivalent of its original condition, or such other condition as Mortgagee may approve in writing, in the event of any damage, injury or loss thereto, whether or not insurance proceeds are available to cover in whole or in part the costs of such restoration or repair, (iv) will keep the Property, including improvements, fixtures, equipment, machinery and appliances thereon, in good condition and repair and shall replace fixtures, equipment, machinery and appliances of the Property when necessary to keep such items in good condition and repair, and (v) will generally operate and maintain the Property in a manner to ensure maximum revenue.

(b) Alterations. No building or other improvement on the Realty will be structurally altered, removed or demolished, in whole or in part, without Mortgagee's prior written consent, nor will any fixture or chattel covered by this Mortgage and adapted to the use and enjoyment of the Property be removed at any time without like consent unless actually replaced by an article of equal suitability, owned by Mortgagor, free and clear of any lien or security interest except such as may be approved in writing by Mortgagee.

(c) Right of Entry. Mortgagee is hereby authorized to enter the Property, including the interior of any structures, at reasonable times and after reasonable notice, for the purpose of inspecting the Property and for the purpose of performing any of the acts it is authorized to perform hereunder.

2.5 Hazardous Substances.

(a) No Future Hazardous Substances. Mortgagor will not cause or permit the Property to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process any Hazardous Substance (as defined in this Mortgage), except in compliance with all applicable federal, state and local statutes, ordinances, rules, regulations and other laws, nor shall Mortgagor cause or permit, as a result of any intentional or unintentional act or omission on the part of Mortgagor or any tenant, subtenant or other user or occupier of the Property, a releasing, spilling, leaking, pumping, pouring, emitting, emptying or dumping of any Hazardous Substance onto the Property or any other property or into any waters, except in compliance with all such laws.

UNOFFICIAL COPY

9 0 5 2 5 1 6 1

(b) Notification: Clean Up. Mortgagor will immediately notify Mortgagee should Mortgagor (i) become aware of any Hazardous Substance or other environmental problem or liability with respect to the Property, (ii) receive any notice of, or become aware of, any actual or alleged violation with respect to the Property of any federal, state or local statute, ordinance, rule, regulation or other law pertaining to Hazardous Substances, or (iii) become aware of any lien or action with respect to any of the foregoing. Mortgagor will, at its sole expense, take all actions as may be necessary or advisable for the clean-up of Hazardous Substances on or with respect to the Property, including without limitation all removal, containment and remedial actions in accordance with all applicable laws and in all events in a manner satisfactory to Mortgagee, and shall further pay or cause to be paid all clean-up, administrative and enforcement costs of governmental agencies with respect to Hazardous Substances on or with respect to the Property if obligated to do so by contract or by law.

(c) Verification. For the purposes of inspecting the Property to ascertain the accuracy of all representations and warranties in this Mortgage relating to Hazardous Substances, and the observance of all covenants contained in this paragraph 2.5, (i) Mortgagee is hereby authorized to enter and inspect the Property, including the interior of any structures, at reasonable times and after reasonable notice, and (ii) if and at any time Hazardous Substances are being handled on the Property, Mortgagor shall furnish Mortgagee with such information and documents as may be reasonably requested by Mortgagee to confirm that such Hazardous Substances are being handled in compliance with all applicable federal, state and local statutes, ordinances, rules, regulations and other laws. Mortgagor shall reimburse Mortgagee upon demand for all costs and expenses, including without limitation attorneys' fees, incurred by Mortgagee in connection with any such entry and inspection and the obtaining of such information and documents.

2.6 Parking. If any part of the automobile parking areas included within the Property is taken by condemnation, or before said areas are otherwise reduced, Mortgagor will take all actions as are necessary to provide parking facilities in kind, size and location to comply with all governmental zoning and other regulations and all leases. Before making any contract for substitute parking facilities, Mortgagor will furnish to Mortgagee satisfactory assurance of completion thereof free of liens and in conformity with all government zoning and other regulations.

2.7 Use of Property. Mortgagor will comply with all laws, ordinances, regulations and requirements of any governmental body, and all other covenants, conditions and restrictions, applicable to the Property, and pay all fees and charges in connection therewith. Unless required by applicable law or unless Mortgagee has otherwise agreed in writing, Mortgagor will not allow changes in the use for which all or any part of the Property was intended at the time this Mortgage was executed. Mortgagor will not initiate or acquiesce in a change in the zoning classification of the Property without Mortgagee's prior written consent.

2.8 Condemnation.

(a) Proceedings. Mortgagor will promptly notify Mortgagee of any action or proceeding relating to any condemnation or other taking (including without limitation change of grade), whether direct or indirect, of the Property or part thereof or interest therein, and Mortgagor will appear in and prosecute any such action or proceeding unless otherwise directed by Mortgagee in writing. Mortgagor authorizes Mortgagee, at Mortgagee's option, as attorney-in-fact for Mortgagor, to commence, appear in and prosecute, in Mortgagee's or Mortgagor's name, any action or proceeding relating to any such condemnation or other taking, and to settle or compromise any claim in connection with such condemnation or other taking; provided, however, that Mortgagee shall have no obligation to do so. All awards, payments, damages, direct, consequential and otherwise, claims, and proceeds thereof, in connection with any such condemnation or other taking, or for conveyances in lieu of condemnation, are hereby assigned to

UNOFFICIAL COPY

9 0 5 2 5 4 6 1

Mortgagee, and all proceeds of any such awards, payments, damages or claims shall be paid to Mortgagee.

(b) Application of Proceeds. Mortgagee shall apply any such proceeds in the manner and upon the terms and conditions set forth in paragraph 2.3(d)(ii) relating to the application of insurance proceeds, without regard to the provisions of paragraph 2.3(d)(iii).

2.9 Protection of Mortgagee's Security. Mortgagor will give notice to Mortgagee of and will, at its expense, appear in and defend any action or proceeding that might affect the Property or title thereto or the interests of Mortgagee therein or the rights or remedies of Mortgagee. If any such action or proceeding is commenced or if Mortgagee is made a party to any such action or proceeding by reason of this Mortgage, or if Mortgagor fails to perform any obligation on its part to be performed hereunder, then Mortgagee, in its own discretion, may make any appearances, disburse any sums, make any entries upon the Property and take any actions as may be necessary or desirable to protect or enforce the security of this Mortgage, to remedy Mortgagor's failure to perform its covenants (without, however, waiving any default by Mortgagor) or otherwise to protect Mortgagee's interests. Mortgagor agrees to pay all loss, damage, costs and expenses, including reasonable attorneys' fees, of Mortgagee thus incurred. This paragraph shall not be construed to require Mortgagee to incur any expenses, make any appearances or take any actions.

2.10 Reimbursement of Mortgagee's and Expenses. All amounts disbursed by Mortgagee pursuant to paragraph 2.9 or any other provision of this Mortgage, with interest thereon, shall be additional indebtedness of Mortgagor secured by his Mortgage. All such amounts shall be immediately due and payable and shall bear interest from the date of disbursement at the interest rate in effect on the Note from time to time, or at the maximum rate which may be collected from Mortgagor on such amounts by the payee thereof under applicable law if that is less.

2.11 Books and Records: Financial Statements. Mortgagor will keep and maintain at Mortgagor's address stated above, or such other place as Mortgagee may approve in writing, books of accounts and records adequate to reflect correctly the results of the operation of the Property and copies of all written contracts, leases and other instruments which affect the Property. Such books, records, contracts, leases and other instruments shall be subject to examination, inspection and copying at any reasonable time by Mortgagee. Mortgagor will furnish to Mortgagee, within twenty (20) days after Mortgagee's request therefor, the following documents, each certified to Mortgagee by Mortgagor as being true, correct and complete: (a) a copy of all leases and other agreements for the occupancy or use of all or any part of the Property, (b) a rent roll for the Property, showing the name of each tenant, and for each tenant, the suite occupied, the number of square feet rented, the lease expiration date, the rent payable, the date through which rent has been paid, the amount of any security deposit and the number and term of any renewal options, (c) a copy of the most recent real and personal property tax statements for the Property, (d) a copy of the most recent statements for the insurance coverages maintained under paragraph 2.3(a) of this Mortgage, and (e) a statement of income and expenses of the Property for the most recently ended fiscal year of Mortgagor. In addition, Mortgagor and any general partner therein and any guarantor of the Loan will furnish to Mortgagee, within twenty (20) days after Mortgagee's request therefor, a complete and current financial statement, in reasonable detail and certified as correct by Mortgagor or such partner or guarantor, together with a true and correct copy of such person's most recent federal income tax return.

ARTICLE 3 RESERVES

3.1 Deposits. If Mortgagee so requires, Mortgagor will, at the time of making each installment payment under the Note, deposit with Mortgagee a sum, as estimated by Mortgagee, equal to (a) the rents

under any ground lease, (b) the taxes and special assessments next due on the Property, and (c) the premiums that will next become due on insurance policies as may be required under this Mortgage, less all sums already deposited therefor, divided by the number of months to elapse before two (2) months prior to the date when such rents, taxes, special assessments and premiums will become delinquent. Mortgagee may require Mortgagor to deposit with Mortgagee, in advance, such other sums for other taxes, assessments, premiums, charges and impositions in connection with Mortgagor or the Property as Mortgagee reasonably deems necessary to protect Mortgagee's interests (herein "Other Impositions"). Such sums for Other Impositions shall be deposited in a lump sum or in periodic installments, at Mortgagee's option. If requested by Mortgagee, Mortgagor will promptly deliver to Mortgagee all bills and notices with respect to any rents, taxes, assessments, premiums and Other Impositions. All sums deposited with Mortgagee under this paragraph 3.1 are hereby pledged as additional security for the Secured Obligations.

3.2 Application of Deposits. All such deposited sums shall be held by Mortgagee and applied in such order as Mortgagee elects to pay such rents, taxes, assessments, premiums and Other Impositions or, in the event of default hereunder, may be applied in whole or in part, to indebtedness secured hereby. The arrangement provided for in this Article III is solely for the added protection of Mortgagee and entails no responsibility on Mortgagee's part beyond the allowing of due credit, without interest, for the sums actually received by it. Upon any assignment of this Mortgage by Mortgagee, any funds on hand shall be turned over to the assignee and any responsibility of Mortgagee with respect thereto shall terminate. Each transfer of the Property shall automatically transfer to the grantee all rights of Mortgagor with respect to any funds accumulated hereunder. Upon payment in full of the Secured Obligations, Mortgagee shall promptly refund to Mortgagor the remaining balance of any deposits then held by Mortgagee.

3.3 Adjustments to Deposits. If the total deposits held by Mortgagee exceed the amount deemed necessary by Mortgagee to provide for the payment of such rents, taxes, assessments, premiums and Other Impositions as the same fall due, then such excess shall, provided no event of default then exists hereunder, be credited by Mortgagee on the next due installment or installments of such deposits. If at any time the total deposits held by Mortgagee is less than the amount deemed necessary by Mortgagee to provide for the payment thereof as the same fall due, then Mortgagor will deposit the deficiency with Mortgagee within thirty (30) days after written notice to Mortgagor stating the amount of the deficiency.

3.4 Conditional Waiver. Notwithstanding any other provision of this Mortgage, Mortgagee agrees that it will not require the payment of reserves as provided in this Article III, so long as there is no delinquency in the payment of any taxes or assessments levied or assessed against the Property, nor any delinquency in the payment of the premiums for any insurance required under this Mortgage, and there is no other event of default under this Mortgage.

ARTICLE 4

RESTRICTIONS ON TRANSFER OR ENCUMBRANCE

4.1 Restrictions on Transfer or Encumbrance of the Property. If the Property or any part thereof or interest therein shall be encumbered, sold (by contract or otherwise), conveyed, or otherwise transferred by Mortgagor, or if without Mortgagee's prior written consent there shall be any change in the ownership of any stock interest in a corporate Mortgagor, in the ownership of any general partnership interest in any general or limited partnership Mortgagor or in the ownership of any beneficial interest in any other Mortgagor which is not a natural person or persons, or if without Mortgagee's prior written consent there shall be any change in the ownership of any such stock, general partnership or other beneficial interest in any corporation, partnership or other entity, organization or association directly or indirectly owning an interest in Mortgagor, then the same shall be deemed to be a "Transfer" for purposes of this paragraph. In the event

of such a Transfer, Mortgagee may, at its sole option, declare such Transfer to constitute an event of default under this Mortgage and invoke any remedy or remedies provided for in paragraph 8.1 hereof or may, at its sole option, consent to such Transfer and increase the interest rate on the indebtedness secured hereby. Neither of the foregoing options shall apply, however, in the case of a Transfer by devise or descent or operation of law upon the death of an individual Mortgagor, a partner of a partnership Mortgagor, a shareholder of a corporate Mortgagor, the owner of a beneficial interest of any other Mortgagor which is not a natural person, or the owner of any stock, partnership or other beneficial interest in any corporation, partnership or other entity, organization or association directly or indirectly owning an interest in Mortgagor, provided that following the Transfer the person(s) and/or firm(s) having effective managerial control of the Property are reasonably satisfactory to Mortgagee.

4.2 Loan Assumption Provision. Notwithstanding any provision of this Mortgage to the contrary, Mortgagee will consent to one sale of the Property and assumption by the purchaser of the indebtedness secured hereby pursuant to the terms of the Mortgage against the Property as described in Article 10, below:

4.3 Secondary Financing. Notwithstanding any provision of this Mortgage to the contrary, Mortgagee hereby agrees that it will consent, on a one-time only basis, to a subordinate mortgage (the "Subordinate Lien") against the Property pursuant to the terms of the Mortgage described in Article 10 below so long as such Subordinate Lien is also subordinate to this Mortgage.

ARTICLE 5

UNIFORM COMMERCIAL CODE SECURITY AGREEMENT

5.1 Grant to Mortgagee. This Mortgage constitutes a security agreement pursuant to the Uniform Commercial Code with respect to:

(a) Any of the Property which, under applicable law, is not real property or effectively made part of the real property by the provisions of this Mortgage; and

(b) Any and all other property now or hereafter described on any Uniform Commercial Code Financing Statement naming Mortgagor as Debtor and Mortgagee as Secured Party and affecting property in any way connected with the use and enjoyment of the Property (any and all such other property constituting "Property" for purposes of this Mortgage);

and Mortgagor hereby grants Mortgagee a security interest in all property described in clauses (a) and (b) above as additional security for the Secured Obligations. Mortgagor and Mortgagee agree, however, that neither the foregoing grant of a security interest nor the filing of any such financing statement shall ever be construed as in any way derogating from the parties' hereby stated intention that everything used in connection with the production of income from the Property or adapted for use therein or which is described or reflected in this Mortgage is and at all times shall be regarded for all purposes as part of the real property.

5.2 Mortgagee's Rights and Remedies. With respect to Property subject to the foregoing security interest, Mortgagee has all of the rights and remedies (i) of a secured party under the Uniform Commercial Code, (ii) provided herein, including without limitation the right to cause such Property to be sold under the power of sale granted by this Mortgage, and (iii) provided by law. In exercising its remedies, Mortgagee may proceed against the items of real property and any items of personal property separately or together and in any order whatsoever, without in any way affecting the availability of Mortgagee's remedies. Upon demand by Mortgagee following an event of default hereunder, Mortgagor will assemble any items of personal property and make them available to Mortgagee at the Property, a place which is hereby deemed

UNOFFICIAL COPY

The undersigned, being duly sworn, depose and say that the foregoing is a true and correct copy of the original as the same appears from the records of the County of Cook, Illinois, and that the same is a true and correct copy of the original as the same appears from the records of the County of Cook, Illinois, and that the same is a true and correct copy of the original as the same appears from the records of the County of Cook, Illinois.

Subscribed and sworn to before me this _____ day of _____, 19____.

Notary Public for Cook County, Illinois.

Property of Cook County Clerk's Office

Witness my hand and the seal of my office this _____ day of _____, 19____.

Notary Public for Cook County, Illinois.

Subscribed and sworn to before me this _____ day of _____, 19____.

Notary Public for Cook County, Illinois.

Subscribed and sworn to before me this _____ day of _____, 19____.

11/11/11

UNOFFICIAL COPY

9 0 5 2 5 4 6 1

to be reasonably convenient to both parties. Mortgagee shall give Mortgagor at least ten (10) days' prior written notice of the time and place of any public sale or other disposition of such Property or of the time of or after which any private sale or any other intended disposition is to be made. Any person permitted by law to purchase at any such sale may do so. Such Property may be sold at any one or more public or private sales as permitted by applicable law. All expenses incurred in realizing on such Property shall be borne by Mortgagor.

5.3 Fixture Filing: THIS MORTGAGE SHALL BE EFFECTIVE AS A FINANCING STATEMENT FILED AS A FIXTURE FILING WITH RESPECT TO ALL GOODS WHICH ARE OR ARE TO BECOME FIXTURES RELATED TO THE PROPERTY. FOR PURPOSES OF THE UNIFORM COMMERCIAL CODE THE FOLLOWING INFORMATION IS FURNISHED:

(a) The name and address of the record owner of the real estate described in this instrument is:

Commercial National Bank of Berwyn,
not personally, but solely as Trustee
pursuant to the provisions of a Trust
Agreement dated December 2, 1986, and
known as Trust Number 860970
3322 South Oak Park Avenue
Berwyn, Illinois 60402

(b) the name and address of the Debtor is:

Commercial National Bank of Berwyn,
not personally, but solely as Trustee
pursuant to the provisions of a Trust
Agreement dated December 2, 1986, and
known as Trust Number 860970
3322 South Oak Park Avenue
Berwyn, Illinois 60402

(c) the name and address of the Secured Party is:

Great Northern Insured Annuity Corporation
P. O. Box 490
Seattle, Washington 98111-0490

(d) Information concerning the security interest evidenced by this instrument may be obtained from the Secured Party at its address above.

(e) This document covers goods which are or are to become fixtures.

30525461

UNOFFICIAL COPY

State property and...
and...
List...
M...
of...

DEPARTMENT OF...
DEPARTMENT OF...
DEPARTMENT OF...

of...

Property of Cook County Clerk's Office

and...

of...

11/11/2011

UNOFFICIAL COPY

9 0 5 2 5 4 6 1

ARTICLE 6 LEASES OF PROPERTY

6.1 Mortgagor to Comply with Leases. Mortgagor will, at its own cost and expense:

- (a) Faithfully abide by, perform and discharge each and every obligation, covenant and agreement under any leases or other agreements for the occupancy or use of the Property (collectively "Leases") to be performed by the landlord thereunder;
- (b) Enforce or secure the performance of each and every material obligation, covenant, condition and agreement of said Leases by the tenants thereunder to be performed;
- (c) Not borrow against, pledge or further assign any rentals due under said Leases;
- (d) Not permit the prepayment of any rents due under any of the Leases for more than one month in advance nor for more than the next accruing installment of rents, nor anticipate, discount, compromise, forgive or waive any such rents;
- (e) Not waive, excuse, condone or in any manner release or discharge any tenants of or from the obligations, covenants, conditions and agreements by said tenants to be performed under the Leases;
- (f) Not permit any tenant to assign or sublet its interest in any of the Leases unless required to do so by the terms of the Lease and then only if such assignment does not work to relieve the tenant of any liability for payment of and performance of its obligations under such Lease;
- (g) Not terminate any Lease or accept a surrender thereof or a discharge of the tenant unless required to do so by the terms of its Lease or unless the Mortgagor and tenant shall have executed a new lease effective upon such termination for the same term of years at a rental not less than as provided in the terminated lease and on terms no less favorable to the landlord than as in the terminated lease;
- (h) Not consent to a subordination of the interest of any tenant to any party other than Mortgagee and then only if specifically consented to by the Mortgagee; and
- (i) Not amend or modify any Lease or alter the obligations of the parties thereunder, excepting in the ordinary and prudent course of business with due regard for the security afforded the Mortgagee by the Lease and which does not in any way reduce the rent or diminish the term thereof or the obligations of the tenant thereunder or increase the term of the tenancy or impose additional obligations or burdens on the landlord.

6.2 Mortgagee's Right to Perform Under Leases. Should the Mortgagor fail to perform, comply with or discharge any obligations of Mortgagor under any lease or should the Mortgagee become aware of or be notified by any tenant under any lease of a failure on the part of Mortgagor to so perform, comply with or discharge its obligations under said lease, Mortgagee may, but shall not be obligated to, and without further demand upon the Mortgagor, and without waiving or releasing Mortgagor from any obligation in this Mortgage contained, remedy such failure, and the Mortgagor agrees to repay upon demand all sums incurred by the Mortgagee in remedying any such failure together with interest at the then rate in effect on the Note. All such sums, together with interest as aforesaid shall become so much additional indebtedness secured by this Mortgage, but no such advance shall be deemed to relieve the Mortgagor from any default hereunder.

6.3 Lease Approval. Each lease of the Property to be entered into by Mortgagor shall be approved by the Mortgagee and shall be satisfactory to the Mortgagee in form and content. Each such lease at the election of the Mortgagee will be either superior or subordinate to the lien of the Mortgage and each tenant shall execute an appropriate subordination or attornment agreement as required by the Mortgagee. Each lease of the Property shall at Mortgagee's option be filed for record in the local recording office of the county where the Property is located. Also, to the extent required by the Mortgagee, each tenant shall execute an

UNOFFICIAL COPY

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the County of Cook, Illinois, this _____ day of _____, 20____.

Clerk of Cook County, Illinois

Notary Public in and for the State of Illinois

Notary Public in and for the State of Illinois

Notary Public in and for the State of Illinois

Notary Public in and for the State of Illinois

Notary Public in and for the State of Illinois

Notary Public in and for the State of Illinois

Notary Public in and for the State of Illinois

Notary Public in and for the State of Illinois

Notary Public in and for the State of Illinois

Notary Public in and for the State of Illinois

Notary Public in and for the State of Illinois

Notary Public in and for the State of Illinois

Notary Public in and for the State of Illinois

Property of Cook County Clerk's Office

104-00000

estoppel certificate and acknowledge receipt of a notice of the assignment of its lease, all satisfactory in form and content to the Mortgagee.

ARTICLE 7 EVENTS OF DEFAULT

7.1 Events of Default: The occurrence of any one or more of the following shall constitute an event of default hereunder:

(a) Failure to make any payment when due under the Note, this Mortgage or any of the other Loan Documents, followed by the failure to make such payment within ten (10) days after written notice thereof given to Mortgagor by Mortgagee; provided, however, that Mortgagee shall not be obligated to give Mortgagor written notice prior to exercising its remedies with respect to such default if Mortgagee had previously given Mortgagor during that calendar year a notice of default for failure to make a payment of similar type.

(b) Failure to perform any other covenant, agreement or obligation under the Note, this Mortgage or any of the other Loan Documents, followed by the failure to cure such default within thirty (30) days after written notice thereof given to Mortgagor by Mortgagee (or if such cure cannot be completed within such thirty (30) day period through the exercise of diligence, the failure by Mortgagor to commence the required cure within such thirty (30) day period and thereafter to continue the cure with diligence and to complete the cure within ninety (90) days following Mortgagee's notice of default).

(c) Mortgagor or any trustee of Mortgagor files a petition in bankruptcy or for an arrangement, reorganization or any other form of debtor relief; or such a petition is filed against Mortgagor or any trustee of Mortgagor and the petition is not dismissed within forty-five (45) days after filing.

(d) A decree or order is entered for the appointment of a trustee, receiver or liquidator for Mortgagor or Mortgagor's property, and such decree or order is not vacated within forty-five (45) days after the date of entry.

(e) Mortgagor commences any proceeding for dissolution or liquidation; or any such proceeding is commenced against Mortgagor and the proceeding is not dismissed within forty-five (45) days after the date of commencement.

(f) Mortgagor makes an assignment for the benefit of its creditors, or admits in writing its inability to pay its debts generally as they become due.

(g) There is an attachment, execution or other judicial seizure of any portion of Mortgagor's assets and such seizure is not discharged within ten (10) days.

(h) Any representation or disclosure made to Mortgagee by Mortgagor or any guarantor of the Loan proves to be materially false or misleading when made, whether or not that representation or disclosure is contained herein.

UNOFFICIAL COPY

Amount of production for record of the...

There are established in the...

over the...

will also...

the...

the...

does...

the...

is...

nothing...

Property of Cook County Clerk's Office

ENCLOSURE

UNOFFICIAL COPY

9 0 5 2 5 4 6 1

ARTICLE 8 REMEDIES

8.1 Acceleration Upon Default; Additional Remedies. In the event of default hereunder, Mortgagee may, at its option and without notice to or demand upon Mortgagor, take any one or more of the following actions:

- (a) Declare any or all indebtedness secured by this Mortgage to be due and payable immediately.
- (b) Bring a court action to enforce the provisions of this Mortgage or any of the indebtedness or obligations secured by this Mortgage.
- (c) Bring a court action to foreclose this Mortgage.
- (d) Foreclose this Mortgage in any manner permitted by applicable law.
- (e) Exercise any or all of the rights and remedies provided for herein in the event of default hereunder.
- (f) Exercise any other right or remedy available under law or in equity.

8.2 Right to Foreclose. If an event of default shall occur hereunder, the Mortgagee may, either with or without entry or taking possession, proceed by suit or suits at law or in equity or by any other appropriate proceedings or remedy to enforce payment of the indebtedness secured by this Mortgage or the performance of any other term hereof or any other right and the Mortgagor hereby authorizes and fully empowers the Mortgagee to foreclose this Mortgage by judicial proceedings, either in one parcel or separate lots and parcels, all in accordance with and in the manner prescribed by law, and out of the proceeds arising from sale and foreclosure to retain the principal and interest due on the Note and the indebtedness secured by this Mortgage, together with all such sums of money as Mortgagee shall have expended or advanced pursuant to this Mortgage or pursuant to statute together with interest thereon at the Note rate of interest and all costs and expenses of such foreclosure, including lawful attorney's fees, with the balance, if any, to be paid to the persons entitled thereto by law. In any such proceeding the Mortgagee may apply all or any portion of the indebtedness secured by this Mortgage to the amount of the purchase price.

8.3 Receiver. If an event of default shall occur hereunder, the Mortgagee shall be entitled as a matter of right without notice and without giving bond and without regard to the solvency or insolvency of the Mortgagor, or waste of the Property, or adequacy of the security of the Property, to apply for the appointment of a Receiver who shall have all the rights, powers and remedies as provided by such statute and who shall apply the rents, issues and profits as provided by statute and thereafter to all expenses for maintenance of the Property and to the costs and expenses of the receivership, including reasonably attorneys' fees and to the payment of the indebtedness secured by this Mortgage.

8.4 Waiver of Order of Sale and Marshalling. Mortgagor waives all rights to direct the order in which any of the Property will be sold in the event of any foreclosure sale, and also any right to have any of the Property marshalled upon any sale.

8.5 Non-Waiver of Defaults. The entering upon and taking possession of the Property, the collection of Rents or the proceeds of fire and other insurance policies or compensation or awards for any

UNOFFICIAL COPY

PROPERTY OF COOK COUNTY CLERK'S OFFICE

PROPERTY OF COOK COUNTY CLERK'S OFFICE

PROPERTY OF COOK COUNTY CLERK'S OFFICE

PROPERTY OF COOK COUNTY CLERK'S OFFICE

PROPERTY OF COOK COUNTY CLERK'S OFFICE

PROPERTY OF COOK COUNTY CLERK'S OFFICE

PROPERTY OF COOK COUNTY CLERK'S OFFICE

PROPERTY OF COOK COUNTY CLERK'S OFFICE

Property of Cook County Clerk's Office

PROPERTY OF COOK COUNTY CLERK'S OFFICE

UNOFFICIAL COPY

9 0 5 2 5 4 6 1

taking or damage of the Property, and the application or release thereof as herein provided, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

8.6 Expenses During Redemption Period. If this Mortgage is foreclosed through court action and the Property sold at a foreclosure sale, the purchaser may during any redemption period allowed, make such repairs or alterations on the Property as may be reasonably necessary for the proper operation, care, preservation, protection and insuring thereof. Any sums so paid together with interest thereon from the time of such expenditure at the default rate of interest stated in the Note or the highest lawful rate if that is less shall be added to and become a part of the amount required to be paid for redemption from such sale.

8.7 Foreclosure Subject to Tenancies. Mortgagee shall have the right at its option to foreclose this Mortgage subject to the rights of any tenant or tenants of the Property.

8.8 Evasion of Prepayment Terms. If an event of default hereunder has occurred and is continuing, a tender of payment of the amount necessary to satisfy the entire indebtedness secured hereby made at any time prior to foreclosure sale (including sale under power of sale) by Mortgagor, its successors or assigns or by anyone in behalf of Mortgagor, its successors or assigns, shall constitute an evasion of the prepayment terms of the Note and be deemed to be a voluntary prepayment thereunder and any such payment to the extent permitted by law, will, therefore, include the additional payment required under the prepayment privilege, if any, contained in the Note.

8.9 Remedies Cumulative. To the extent permitted by law, every right and remedy provided in this Mortgage is distinct and cumulative to all other rights or remedies under this Mortgage or afforded by law or equity or any other agreement between Mortgagee and Mortgagor, and may be exercised concurrently, independently or successively, in any order whatsoever. Mortgagee may exercise any of its rights and remedies at its option without regard to the adequacy of its security.

8.10 Mortgagee's Expenses. Mortgagor will pay all of Mortgagee's expenses incurred in any efforts to enforce any terms of this Mortgage, whether or not any suit is filed, including without limitation legal fees and disbursements, foreclosure costs and title charges. All such sums, with interest thereon, shall be additional indebtedness of Mortgagor secured by this Mortgage. Such sums shall be immediately due and payable and shall bear interest from the date of disbursement at the default rate of interest stated in the Note, or the maximum rate which may be collected from Mortgagor under applicable law if that is less.

8.11 Waiver of Appraisal, Homestead, Redemption. The Mortgagor hereby covenants and agrees that it will not at any time insist or plead, or in any manner whatever claim or take any 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 of advantage of or from any law now or hereafter in force providing for the valuation or appraisal of the Property, or any part thereof, prior to any sale or sales thereof to be made pursuant to any provisions herein contained, or to decree, judgment or order of any court of competent jurisdiction; or after such sale or sales claim or exercise any rights under any statute now or hereafter in force to redeem the property so sold, or any part thereof, or relating to the marshalling thereof, upon foreclosure sale or other enforcement hereof. The Mortgagor hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage, on its own behalf and on behalf of each and every person, it being the intent hereof that any and all such rights of redemption of the Mortgagor and of all other persons are and shall be deemed to be hereby waived to the full extent permitted by the provisions of Chapter 110, Para. 12-124, Para. 12-125, and Para. 15-1601 of the Illinois Revised Statutes currently in effect or other applicable law or replacement statutes. The Mortgagor will not invoke or utilize any such law or laws or otherwise hinder, delay or impede the execution of any right, power or remedy herein or otherwise granted or delegated to the Mortgagee, but will suffer and permit

the execution of every other right, power and remedy as though no such law or laws had been made or enacted. If the Mortgagor is a trustee, Mortgagor represents that the provisions of this Section (including the waiver of redemption rights) were made at the express direction of Mortgagor's beneficiaries and the persons having the power of direction over Mortgagor and are made on behalf of the Trust Estate of Mortgagor and all beneficiaries of Mortgagor, as well as all other persons mentioned above.

ARTICLE 9 GENERAL

9.1 Application of Payments. Except as applicable law or this Mortgage may otherwise provide, all payments received by Mortgagee under the Note or this Mortgage shall be applied by Mortgagee in the following order of priority: (a) Mortgagee's expenses incurred in any efforts to enforce any terms of this Mortgage; (b) amounts payable to Mortgagee by Mortgagor under Article 3 for reserves; (c) interest and late charges payable on the Note; (d) principal of the Note; (e) interest payable on advances made to protect the security of this Mortgage; (f) principal of such advances; and (g) any other sums secured by this Mortgage in such order as Mortgagee, at its option, may determine; provided, however, that Mortgagee may, at its option, apply any such payments received to interest on and principal of advances made to protect the security of this Mortgage prior to applying such payments to interest on or principal of the Note.

9.2 Release of Mortgage. Upon payment of all sums secured by this Mortgage, this Mortgage and all assignments contained herein shall be void, and this Mortgage shall be released by the Mortgagee at the cost and expense of the Mortgagor, otherwise to remain in full force and effect.

9.3 Mortgagee's Powers. Without affecting the liability of any person for payment or performance of the Secured Obligations, Mortgagee, at its option, may extend the time for payment of the indebtedness secured hereby or any part thereof, reduce payment thereon, release anyone liable on any of said indebtedness, accept a renewal note or notes therefor, modify the terms and time of payment of the indebtedness, release the lien of this Mortgage on any part of the Property, take or release other or additional security, release or cause to be released all or any part of the Property, or consent to the making of any map or plat of the Property, consent to the granting of any easement or creating any restriction on the Property, or join in any subordination or other agreement affecting this Mortgage or the lien or charge hereof. Mortgagor shall pay Mortgagee a reasonable service charge, together with such title insurance premiums and attorneys' fees as may be incurred at Mortgagee's option, for any such action if taken at Mortgagor's request.

9.4 Subrogation. Mortgagee shall be subrogated for further security to the lien, although released of record, of any and all encumbrances discharged, in whole or in part, by the proceeds of the loan or any other indebtedness secured hereby.

9.5 No Violation of Usury Laws. Interest, fees and charges collected or to be collected in connection with the indebtedness secured hereby shall not exceed the maximum, if any, permitted by any applicable law. If any such law is interpreted so that said interest, fees and/or charges would exceed any such maximum and Mortgagor is entitled to the benefit of such law, then: (a) such interest, fees and/or charges shall be reduced by the amount necessary to reduce the same to the permitted maximum; and (b) any sums already paid to Mortgagee which exceeded the permitted maximum will be refunded. Mortgagee may choose to make the refund either by treating the payments, to the extent of the excess, as prepayments of principal or by making a direct payment to the person(s) entitled thereto. No prepayment premium shall be assessed on prepayments under this paragraph. The provisions of this paragraph shall control over any inconsistent provision of this Mortgage or the Note or any other Loan Documents.

UNOFFICIAL COPY

to whom you are indebted, or
to whom you are indebted, or
to whom you are indebted, or
to whom you are indebted, or
to whom you are indebted, or

to whom you are indebted, or
to whom you are indebted, or
to whom you are indebted, or
to whom you are indebted, or
to whom you are indebted, or
to whom you are indebted, or
to whom you are indebted, or
to whom you are indebted, or

to whom you are indebted, or
to whom you are indebted, or

to whom you are indebted, or
to whom you are indebted, or
to whom you are indebted, or
to whom you are indebted, or
to whom you are indebted, or
to whom you are indebted, or
to whom you are indebted, or
to whom you are indebted, or

to whom you are indebted, or
to whom you are indebted, or

to whom you are indebted, or
to whom you are indebted, or
to whom you are indebted, or
to whom you are indebted, or
to whom you are indebted, or
to whom you are indebted, or
to whom you are indebted, or
to whom you are indebted, or

PROPERTY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

9 0 5 2 5 4 6 1

9.6 Additional Documents; Power of Attorney. Mortgagor, from time to time, will execute, acknowledge and deliver to Mortgagee upon request, and hereby irrevocably appoints Mortgagee its attorney-in-fact to execute, acknowledge, deliver and if appropriate file and record, such security agreements, assignments for security purposes, assignments absolute, financing statements, affidavits, certificates and other documents, in form and substance satisfactory to Mortgagee, as Mortgagee may request in order to perfect, preserve, continue, extend or maintain the assignments herein contained, the lien and security interest under this Mortgage, and the priority thereof. Mortgagor will pay to Mortgagee upon request therefor all costs and expenses incurred in connection with the preparation, execution, recording and filing of any such document.

9.7 Waiver of Statute of Limitations. To the full extent Mortgagor may do so, Mortgagor hereby waives the right to assert any statute of limitations as a defense to the enforcement of the lien of this Mortgage or to any action brought to enforce the Note or any other obligation secured by this Mortgage.

9.8 Forbearance by Mortgagee Not a Waiver. Any forbearance by Mortgagee in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy, and no waiver by Mortgagee of any particular default by Mortgagor shall constitute a waiver of any other default or of any similar default in the future. Without limiting the generality of the foregoing, the acceptance by Mortgagee of payment of any sum secured by this Mortgage after the due date thereof shall not be a waiver of Mortgagee's right to either require prompt payment when due of all other sums so secured or to declare a default for failure to make prompt payment. The procurement of insurance or the payment of taxes or other liens or charges by Mortgagee shall not be a waiver of Mortgagee's right to accelerate the maturity of the indebtedness secured by this Mortgage, nor shall Mortgagee's receipt of any awards, proceeds or damages under paragraphs 2.3 and 2.8 hereof operate to cure or waive Mortgagor's default in payment of sums secured by this Mortgage.

9.9 Modifications and Waivers. This Mortgage cannot be waived, changed, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of any waiver, change, discharge or termination is sought.

9.10 Notice. Except as applicable law may otherwise require, all notices and other communications shall be in writing and shall be deemed given when delivered by personal service or when mailed, by certified or registered mail, postage prepaid, addressed to the address set forth at the beginning of this Mortgage. Any party may at any time change its address for such purposes by delivering or mailing to the other parties hereto as aforesaid a notice of such change.

9.11 Governing Law; Severability; Captions. This Mortgage shall be governed by the laws of the State of Illinois. If any provision or clause of this Mortgage conflicts with applicable law, such conflicts shall not affect other provisions or clauses hereof which can be given effect without the conflicting provision, and to this end the provisions hereof are declared to be severable. The captions and headings of the paragraphs and articles of this Mortgage are for convenience only and are not to be used to interpret or define the provisions hereof.

9.12 Definitions. As used herein: the term "Mortgagor" means the Mortgagor herein named, together with any subsequent owner of the Property or any part thereof or interest therein, and the term "Mortgagee" means the Mortgagee herein named, together with any subsequent owner or holder of the Note or any interest therein, including pledgees, assignees and participants.

UNOFFICIAL COPY

... of the ...
... of the ...
... of the ...
... of the ...
... of the ...
... of the ...

... of the ...
... of the ...
... of the ...

... of the ...
... of the ...
... of the ...
... of the ...
... of the ...
... of the ...
... of the ...
... of the ...

... of the ...
... of the ...

... of the ...
... of the ...
... of the ...
... of the ...

... of the ...
... of the ...
... of the ...
... of the ...

... of the ...
... of the ...
... of the ...

Property of Cook County Clerk's Office

187500

UNOFFICIAL COPY

9 0 5 2 5 4 6 1

9.13 Successors and Assigns Bound; Joint and Several Liability; Agents. This Mortgage shall bind and inure to the benefit of the parties hereto and their respective heirs, devisees, legatees, administrators, executors, successors and assigns, subject to the provisions of Article 4 hereof. All obligations of Mortgagor hereunder are joint and several. In exercising any rights hereunder or taking actions provided for herein, Mortgagee may act through its employees, agents or independent contractors as authorized by Mortgagee.

9.14 Number; Gender. This Mortgage shall be construed so that wherever applicable the use of the singular number shall include the plural number, and vice versa, and the use of any gender shall be applicable to all genders.

9.15 Time. Time is of the essence in connection with all obligations of Mortgagor herein.

9.16 Business Loan. The Mortgagor represents and warrants that the Loan evidenced by the Note is a business loan within the purview of Section 6404 of Chapter 17 of Illinois Revised Statutes currently in effect (or any substitute amended, or replacement statutes) transacted solely for the purpose of carrying on the business of the Mortgagor or, if the Mortgagor is a trustee, for the purpose of carrying on the business of the beneficiaries of the Mortgagor as contemplated by said Section which business is a commercial enterprise carried on for the purpose of investment or profit.

9.17 Usury. All agreements between the Mortgagor and the Mortgagee are hereby expressly limited so that in no contingency or event whatsoever, whether by reason of acceleration of maturity of the Note, or otherwise, shall the amount paid or agreed to be paid to the Mortgagee for the use, forbearance, loaning or detention of the indebtedness secured hereby exceed the maximum permissible under applicable law. If from any circumstances whatsoever, fulfillment of any provisions hereof or of the Note or any other security instrument at any time given for the performance of such provisions shall involve transcending the maximum permissible limited prescribed by law, then the amounts to be paid shall automatically be reduced to the limit of such maximum permissible limits and in from any circumstances the Mortgagee should ever receive as interest an amount which would exceed the maximum permissible limits, such amounts in excess of maximum permissible limits shall be applied to the reduction of the principal balance of the indebtedness secured hereby and not to the payment of interest. This provision shall control every other provision of all agreements between the Mortgagor and Mortgagee.

9.18 Exculpation of Trustee. This Mortgage is executed by Commercial National Bank of Berwyn, a National Banking Association, not personally, but solely as Trustee under the terms of the Trust Agreement aforesaid, solely in the exercise of the power and authority conferred upon and vested in it as such Trustee (and Trustee hereby warrants that it possesses full power and authority to execute this Mortgage). It is expressly understood and agreed that nothing herein contained shall be construed as establishing any personal liability upon Trustee, its agents or employees, to pay any indebtedness referred to herein or to perform any of the terms, covenants, conditions and agreements herein contained, all such personal liability being hereby expressly waived by Mortgagee; Mortgagee's only recourse against Mortgagor being against the mortgaged premises and any other property given as security for the payment of the indebtedness referred to hereinabove. In the manner herein and as provided for in the other documents referred to herein and by law provided, NOTWITHSTANDING THE FOREGOING, nothing contained herein or in the Notes or any of the other loan documents related thereto shall be deemed to have released Michael F. Pokorny and Angela Pokorny (collectively, "Guarantors") from personal liability under that certain Guaranty and Personal Liability Agreement dated March 8, 1990 executed by Guarantors in favor of Mortgagee.

UNOFFICIAL COPY

9 0 5 2 5 4 6 1

ARTICLE 10 SPECIAL PROVISIONS

10.1 Orland Park Loan. Mortgagee has made a loan to the Mortgagor (the "Trust") in the principal sum of One Million Seven Hundred Sixty Two Thousand Five Hundred and no/100 Dollars (\$1,762,500.00), identified as GNA Loan No. 1110 (the "Orland Park Loan") and secured by the property legally described in Exhibit A attached hereto (the "Orland Park Property"). The Orland Park Loan is evidenced by an Adjustable Rate Mortgage Note dated March 8, 1990 (the "Orland Park Note"), and the mortgage securing the Orland Park Loan is that certain Mortgage, dated March 8, 1990, recorded as Document Number 90-118236, in the Office of the County Recorder, Cook County, Illinois which is being contemporaneously with this Mortgage amended by a Modification of Adjustable Rate Mortgage Note and Mortgage which is being recorded with the County Recorder, DuPage County, Illinois, said Mortgage as amended being hereinafter referred to as the "Orland Park Mortgage". This Mortgage is subordinate to the Orland Park Mortgage.

10.2 Additional Mortgages. As a condition to making the Loan, in addition to a Mortgage, Assignment of Rents and Leases, Security Agreement and Fixture Financing Statement (the "Westmont Mortgage") executed and delivered by Michael Pokorny and Angela Pokorny secured by certain property in Westmont, Illinois (the "Westmont Property") the Mortgagee has required that Michael Pokorny and Angela Pokorny, as the sole beneficiaries of the Mortgagor, direct the Trust to execute and deliver and that the Trust execute and deliver this Mortgage, creating a lien against the Orland Park Property and granting a security interest in the personal property at the Orland Park Property to more fully secure the Note, and that Michael Pokorny and Angela Pokorny execute and deliver to Mortgagee a Mortgage, Security Agreement and Fixture Financing Statement creating a lien against the Westmont Property and granting a security interest in the personal property at the Westmont Property to more fully secure the Orland Park Note, (the "Westmont Additional Mortgage").

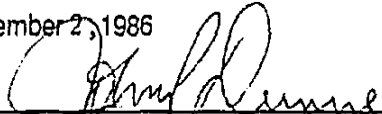
(a) Benefit and Reliance. The individuals constituting the Mortgagor confirm that, as the sole beneficiaries of the Trust have directed the Trust to execute the documents to be executed by it as referred to hereinabove and they and the Trust are benefitting thereby and the Mortgagor acknowledges that, but for such arrangements and agreements which the Mortgagee is relying upon, the Mortgagee would not make the Loan.

(b) Event of Default. In addition to the events of default set forth in paragraph 7.1 of this Mortgage, a Monetary Default or Non-Monetary Default or other default under the Orland Park Mortgage, or an event of default under the Westmont Mortgage or the Westmont Additional Mortgage, or any other instrument or document evidencing or securing the Orland Park Loan or the Loan shall constitute an event of default hereunder.

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

EXONERATION PROVISION RESTRICTING ANY LIABILITY OF THE COMMERCIAL NATIONAL BANK OF BERWYN STATED ON THE REVERSE SIDE HEREOF IS HEREBY EXPRESSLY MADE A PART HEREOF.

COMMERCIAL NATIONAL BANK OF BERWYN,
not personally, but as Trustee aforesaid
under Trust No. 860970 and Dated
December 2, 1986

By 
Title Vice President, John P. Dunne

90525461

UNOFFICIAL COPY

This Document is signed by COMMERCIAL NATIONAL BANK OF BERWYN not individually, but solely as Trustee under Trust Agreement mentioned in said Document. Said Trust Agreement is hereby made a part hereof and any claims against said Trustee which may result from the signing of this Document shall be payable only out of any Trust property which may be held thereunder, except that no duty shall rest upon the COMMERCIAL NATIONAL BANK OF BERWYN personally, or as Trustee, to sequester any of the earnings, avails, or proceeds of any real estate in said Trust. Said Trustee shall not be personally liable for the performance of any of the terms and conditions of this Document or for the validity or condition of the title of said property or for any agreement with respect thereto. Any and all personal liability of the COMMERCIAL NATIONAL BANK OF BERWYN is hereby expressly waived by the parties hereto and their respective successors and assigns. All warranties, covenants, indemnities and representations of each and every kind are those of the Trustee's beneficiaries only and shall not in any way be considered the responsibility and liability of the COMMERCIAL NATIONAL BANK OF BERWYN. This Trustee's exculpatory clause shall be controlling in the event of a conflict of terms created by the documents executed by COMMERCIAL NATIONAL BANK OF BERWYN as Trustee.

Property of Cook County Clerk's Office

10-1-1934

UNOFFICIAL COPY

9 0 5 2 5 4 6 1

ATTEST:

By Carol Ann Weber
Title Assistant Secretary, Carol Ann Weber

STATE OF ILLINOIS
COUNTY OF Cook

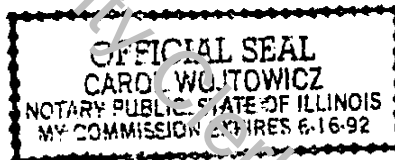
I, Carol Wojtowicz, Notary Public in and for and residing in said County, in the State aforesaid, DO HEREBY CERTIFY that John P. Dunne, Vice President of COMMERCIAL NATIONAL BANK OF BERWYN, ("Bank") and Carol Ann Weber, Assistant Secretary of Bank, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Vice President and Assistant Secretary, respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary acts for the uses and purposes therein set forth; and the said Assistant Secretary did also then and there acknowledge that (she)(he), as custodian of the corporate seal, did affix the said corporate seal to said instrument as (her)(his) own free and voluntary act for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 26th day of October, 1990.

Carol Wojtowicz
Notary Public

My commission expires:

6-16-92



Box 333

THIS DOCUMENT WAS DRAFTED BY:
Duane L. Paulson
OPPENHEIMER WOLFF & DONNELLY
3400 Plaza VII
45 South Seventh Street
Minneapolis, MN 55402

90525461

UNOFFICIAL COPY

9 0 5 2 5 4 6 1

EXHIBIT "A"
TO
MORTGAGE

LEGAL DESCRIPTION

The property which is the subject of this Mortgage is situated in the County of Cook, State of Illinois, and is legally described as follows:

A parcel of property located in the East Half of the Southwest Quarter of Section 15, Township 36 North, Range 12, East of the Third Principal Meridian described as follows: Commencing at the Southwest Corner of the East Half of the Southwest Quarter of said Section 15; thence North 0 Degrees 00 Minutes 18 Seconds East along the West line of the East Half of the Southwest Quarter of said Section 15 (also the center line of 94th Avenue) for a distance of 64.99 feet to a point; thence South 89 degrees 38 minutes 48 seconds East along a line parallel to the South line of the East half of the Southwest quarter of said Section 15 for a distance of 50.00 feet to a point (said point lying on the East right-of-way line of 94th Avenue per document number 70L16926); thence South 44 degrees 41 minutes 27 seconds East along the said East right-of-way line of 94th Avenue for a distance of 21.21 feet to the North right-of-way line of 159th Street per document number 70L16926; thence South 89 degrees 44 minutes 09 seconds East along the said North right-of-way line of 159th Street for a distance of 776.69 feet to a point in a line lying 500.00 feet West of and parallel to the East line of the Southwest quarter of said Section 15 at the point of beginning; thence North 0 degrees 00 minutes 45 seconds East along the said line 500.00 feet West of and parallel to the said East line of the Southwest Quarter of Section 15 for a distance of 398.78 feet to a point in a line lying 450.00 feet North of and parallel to the South line of the East half of the Southwest Quarter of said Section 15; thence South 89 degrees 38 minutes 48 seconds East along the said line lying 450.00 feet North of and parallel to the said South line of the East half of the Southwest Quarter of Section 15 for a distance of 250.00 feet to a line 250.00 feet West of and parallel to the East line of the Southwest Quarter of said Section 15; thence South 0 degrees 00 minutes 45 seconds West for a distance of 393.38 feet to the North right-of-way line of 159th Street; thence North 89 degrees 44 minutes 09 seconds West along said North right-of-way line of 159th Street for a distance of 172.05 feet; thence South 0 degrees 02 minutes 12 seconds West continuing along the North right-of-way line of 159th Street for a distance of 5.00 feet; thence North 89 degrees 44 minutes 09 seconds West continuing along the North right-of-way line of 159th Street for a distance of 77.92 feet to the Point of Beginning in Cook County Illinois.

Commonly Known As: 9280 West 159th Street, Orland Park, Illinois 60462

✓ P.I.N. 27-15-301-018

90525461

UNOFFICIAL COPY

Case: 2012-00000000-00000000-00000000

IN THE CIRCUIT COURT OF THE 14TH JUDICIAL CIRCUIT IN AND FOR COOK COUNTY, ILLINOIS

Case No. 12-00000000-00000000-00000000

STATE OF ILLINOIS, Plaintiff,
vs.
JAMES EARL RAY, Defendant.

COMES NOW the Defendant, JAMES EARL RAY, and files this Motion to Dismiss the State's Complaint, and asks the Court to grant this Motion and to dismiss the State's Complaint with prejudice.

The Defendant moves to dismiss the State's Complaint because the State has failed to establish a prima facie case of guilt against the Defendant. The State's Complaint is based on the following facts:

On or about [redacted], the Defendant was observed at [redacted] in Cook County, Illinois. The Defendant was seen in possession of a firearm and was acting suspiciously. The State's Complaint alleges that the Defendant committed a crime, but it fails to provide any evidence to support these allegations.

The Defendant has been charged with a crime, but the State has failed to establish a prima facie case of guilt against the Defendant. The State's Complaint is based on the following facts:

On or about [redacted], the Defendant was observed at [redacted] in Cook County, Illinois. The Defendant was seen in possession of a firearm and was acting suspiciously. The State's Complaint alleges that the Defendant committed a crime, but it fails to provide any evidence to support these allegations.

The Defendant moves to dismiss the State's Complaint because the State has failed to establish a prima facie case of guilt against the Defendant. The State's Complaint is based on the following facts:

On or about [redacted], the Defendant was observed at [redacted] in Cook County, Illinois. The Defendant was seen in possession of a firearm and was acting suspiciously. The State's Complaint alleges that the Defendant committed a crime, but it fails to provide any evidence to support these allegations.

Property of Cook County Clerk's Office

300251403

UNOFFICIAL COPY

EXHIBIT B
TO 9 0 5 2 5 4 6 1
MORTGAGE

PROMISSORY NOTE

\$1,743,750.00

October ____, 1990
Westmont, Illinois
GNA Loan No.1273

1. Promise to Pay.

FOR VALUE RECEIVED, the undersigned, MICHAEL POKORNY and ANGELA POKORNY, husband and wife (collectively "Borrower"), jointly and severally, promise to pay in lawful money of the United States of America to the order of GREAT NORTHERN INSURED ANNUITY CORPORATION, a Washington corporation ("Lender"), at P. O. Box 490, Seattle, Washington 98111-0490, or such other place either within or without the State of Washington as Lender may designate in writing from time to time, the principal sum of One Million, Seven Hundred and Forty Three Thousand, Seven Hundred and Fifty and no/100 (\$1,743,750.00) Dollars, with interest from the date hereof on the unpaid principal balance at the rate set forth below.

2. Interest.

Interest shall accrue on the unpaid principal balance at a variable rate as follows:

- (a) From the date hereof to but not including the fifth Anniversary Date, the rate of interest shall be Ten (10%) percent per annum.
- (b) On the fifth Anniversary Date and on each succeeding Anniversary Date until this Note is paid in full, the rate of interest shall be adjusted to a rate per annum equal to the sum of "MOODY'S A CORPORATE BOND INDEX DAILY RATE," quoted by Moody's Investor's Service, as of five (5) business days prior to the Anniversary Date, plus ONE QUARTER PERCENT OF ONE PERCENT (.25%) per annum, such sum then rounded up to the next highest one-eighth percentage rate unless such sum constitutes a one-eighth percentage rate without rounding, in which latter event there shall be no such rounding; provided, however, that in no event shall the interest rate be adjusted to a rate in excess of the maximum rate, if any, permitted by applicable law. The rate of interest, as so adjusted, shall take effect on the date of adjustment and shall remain in effect until the next succeeding Anniversary Date.

If the "MOODY'S A CORPORATE BOND INDEX DAILY RATE" shall cease to be available or to be so designated, there shall be substituted therefor any successor index. If the "MOODY'S A CORPORATE BOND INDEX DAILY RATE" or any index substituted therefor in accordance with the preceding sentence shall cease to be available or to be so designated and there is no successor index thereto, the "MOODY'S A CORPORATE BOND INDEX DAILY RATE" or substitute index, as the case may be, shall be replaced by a comparable index selected by Lender in the exercise of its reasonable business judgment.

For purposes hereof, November 1st of each year shall be an "Anniversary Date" hereunder, with the first Anniversary Date being November 1, 1991.

3. Payments and Term.

Principal and interest shall be due and payable as follows:

30525461

UNOFFICIAL COPY

0501 1111 1111
1111 1111 1111
1111 1111 1111

1111 1111 1111
1111 1111 1111
1111 1111 1111
1111 1111 1111
1111 1111 1111
1111 1111 1111

1111 1111 1111
1111 1111 1111

1111 1111 1111
1111 1111 1111
1111 1111 1111
1111 1111 1111
1111 1111 1111
1111 1111 1111
1111 1111 1111
1111 1111 1111

1111 1111 1111
1111 1111 1111
1111 1111 1111
1111 1111 1111
1111 1111 1111

1111 1111 1111 1111 1111 1111 1111 1111

Property of Cook County Clerk's Office

11111111

UNOFFICIAL COPY

9 0 5 2 5 4 6 1

- (a) A payment of all interest to accrue hereon from the Disbursement Date to and including the last day of the month during which the Disbursement Date occurs shall be due and payable on the Disbursement Date. For purposes hereof, the "Disbursement Date" shall be the date on which disbursement of loan proceeds occurs.
- (b) Monthly payments of principal and interest in the sum of Fifteen Thousand, Three Hundred and Three and no/100 (\$15,303.00) Dollars each shall be due and payable on the first day of each calendar month, commencing on the first day of the second calendar month following the Disbursement Date and continuing on the first day of each calendar month thereafter to and including the fifth Anniversary Date.
- (c) On the first day of the first calendar month following the fifth Anniversary Date and on the first day of each calendar month thereafter to the tenth Anniversary Date, a monthly payment of principal and interest, determined in accordance with this paragraph, shall be due and payable. On the fifth Anniversary Date and on each succeeding Anniversary Date thereafter until this Note is paid in full, the monthly payment shall be adjusted to that amount which would be sufficient to amortize the then-remaining principal balance hereon at the interest rate (as adjusted on said Anniversary Date) over the balance of the Amortization Period. The monthly payment, as so adjusted on an Anniversary Date, shall be due and payable beginning with the first monthly payment due after said Anniversary Date and continuing on the first day of each calendar month thereafter to and including the next succeeding Anniversary Date. For purposes hereof, the term "Amortization Period" means the thirty (30) year period commencing on November 1, 1990.
- (d) The entire indebtedness evidenced by this Note, if not sooner paid, shall be due and payable on the tenth Anniversary Date.

All payments on account of the indebtedness evidenced by this Note shall be first applied to interest, costs and prepayment fees (if any) and then to principal. Interest shall be computed on the basis of a 360-day year consisting of twelve 30-day months, except that interest for a portion of a month (such as may be required under paragraph 3 (a) above) shall be computed on the basis of a 365-day year (or a 366-day year during a leap year).

4. Prepayment.

The indebtedness evidenced by this Note may be prepaid, in whole or in part, upon three (3) days prior written notice to Lender and upon payment of a prepayment fee calculated in accordance with the following schedule:

<u>Loan Year</u>	<u>Prepayment Fee</u>
1	FIVE PERCENT (5%) of principal prepaid
2	FOUR AND ONE-HALF PERCENT (4½%) of principal prepaid
3	FOUR PERCENT (4%) of principal prepaid
4	THREE AND ONE-HALF PERCENT (3½%) of principal prepaid
5	THREE PERCENT (3%) of principal prepaid
6	TWO AND ONE-HALF PERCENT (2½%) of principal prepaid
7	TWO PERCENT (2%) of principal prepaid

90525461

UNOFFICIAL COPY

1. The undersigned, being duly sworn, depose and say that the foregoing is a true and correct copy of the original as the same appears in the files of the undersigned.

2. The undersigned, being duly sworn, depose and say that the foregoing is a true and correct copy of the original as the same appears in the files of the undersigned.

3. The undersigned, being duly sworn, depose and say that the foregoing is a true and correct copy of the original as the same appears in the files of the undersigned.

4. The undersigned, being duly sworn, depose and say that the foregoing is a true and correct copy of the original as the same appears in the files of the undersigned.

5. The undersigned, being duly sworn, depose and say that the foregoing is a true and correct copy of the original as the same appears in the files of the undersigned.

6. The undersigned, being duly sworn, depose and say that the foregoing is a true and correct copy of the original as the same appears in the files of the undersigned.

Property of Cook County Clerk's Office

00000000

UNOFFICIAL COPY

9 0 5 2 5 4 6 1

- 8 TWO PERCENT (2%) of principal prepaid
9 TWO PERCENT (2%) of principal prepaid
10 TWO PERCENT (2%) of principal prepaid

Provided, however, that there shall be no prepayment fee payable on principal prepaid during the fifteen (15) calendar day period commencing on the fifth or any subsequent Anniversary Date nor on principal prepaid during the last sixty (60) days of the term of this Note. Any partial prepayment shall be applied upon payments due hereon in the inverse order of their respective due dates. For purposes hereof, the term "Loan Year" means each successive period of twelve (12) months, with the first such period beginning on November 1, 1990.

5. Restrictions on Transfer and Encumbrance.

Borrower and Lender acknowledge and agree that the Mortgage referred to in paragraph 9 below contains the following paragraphs:

4.1 Restrictions on Transfer or Encumbrance of the Property. If the Property or any part thereof or interest therein shall be encumbered, sold (by contract or otherwise), conveyed, or otherwise transferred by Mortgagor, or if without Mortgagee's prior written consent there shall be any change in the ownership of any stock interest in a corporate Mortgagor, in the ownership of any general partnership interest in any general or limited partnership Mortgagor or in the ownership of any beneficial interest in any other Mortgagor which is not a natural person or persons, or if without Mortgagee's prior written consent there shall be any change in the ownership of any such stock, general partnership or other beneficial interest in any corporation, partnership or other entity, organization or association directly or indirectly owning an interest in Mortgagor, then the same shall be deemed to be a "Transfer" for purposes of this paragraph. In the event of such a Transfer, Mortgagee may, at its sole option, declare such Transfer to constitute an event of default under this Mortgage and invoke any remedy or remedies provided for in paragraph 8.1 hereof or may, at its sole option, consent to such Transfer and increase the interest rate on the indebtedness secured hereby. Neither of the foregoing options shall apply, however, in the case of a Transfer by devise or descent or operation of law upon the death of an individual Mortgagor, a partner of a partnership Mortgagor, a shareholder of a corporate Mortgagor, the owner of a beneficial interest of any other Mortgagor which is not a natural person, or the owner of any stock, partnership or other beneficial interest in any corporation, partnership or other entity, organization or association directly or indirectly owning an interest in Mortgagor, provided that following the Transfer the person(s) and/or firm(s) having effective managerial control of the Property are reasonably satisfactory to Mortgagee.

4.2 Loan Assumption Provision. Notwithstanding any provision of this Mortgage to the contrary, Mortgagee will consent to one sale of the Property and assumption by the purchaser of the indebtedness secured hereby, provided that:

- (a) Mortgagor is not then in default under this Mortgage;
- (b) The purchaser of the Property, the financial statements, financial strength, tax returns and credit history of the purchaser, the sale agreement and related documents, and all aspects of the sale are completely satisfactory to Mortgagee;
- (c) The purchaser evidences a history of property management satisfactory to Mortgagee or contracts for management of the Property with a property management firm satisfactory to Mortgagee;

(d) Mortgagee receives in cash an assumption fee of Seventeen Thousand, Four Hundred Thirty Seven Dollars and Fifty Cents Dollars (\$17,437.50) plus its legal and administrative expenses, if any, incurred in connection with such sale and assumption; and

(e) Unless Mortgagee in its sole discretion otherwise agrees in writing at that time, no such sale or assumption shall release Mortgagor or any guarantor or other person from liability, or otherwise affect the liability of Mortgagor or any such guarantor or other person, for payment of the indebtedness secured hereby.

4.3 Secondary Financing:

(a) Conditions. Notwithstanding any provision of this Mortgage to the contrary, Mortgagee hereby agrees that it will consent, on a one-time only basis, to a subordinate mortgage (the "Subordinate Lien") against the Property, provided that each of the following conditions is satisfied with respect to the Subordinate Lien and the indebtedness secured thereby:

(i) The Subordinate Lien is at all times and in all respects unconditionally subordinate to this Mortgage;

(ii) The Subordinate Lien secures a loan to Mortgagor made or extended by a bank, savings and loan association or life insurance company, or by such other institutional lender as may be approved by Mortgagee;

(iii) The maximum principal indebtedness to be secured by the Subordinate Lien does not exceed, and will not exceed at any time during the term thereof, the sum of ONE HUNDRED THIRTY FIVE THOUSAND AND NO/100 DOLLARS (\$135,000.00);

(iv) The terms of the loan secured by the Subordinate Lien require monthly installment payments, which payments shall not exceed ONE THOUSAND EIGHT HUNDRED AND NINETY NINE AND NO/100 DOLLARS (\$1,899.00) each;

(v) All elements relating to the indebtedness secured by the Subordinate Lien, including without limitation the Subordinate Lien, the promissory note secured thereby and any and all other documents executed in connection therewith, are approved by Mortgagee, such approval not to be unreasonably withheld;

(vi) At the time the Subordinate Lien is placed of record, there is no existing event of default under this Mortgage or under any of the other Loan Documents;

(vii) Mortgagor requests and obtains Mortgagee's written consent to the Subordinate Lien transaction prior to the recording of the Subordinate Lien; and

(viii) Mortgagee is paid in cash a \$500.00 secondary financing administrative review fee, plus any out-of-pocket costs, including without limitation

UNOFFICIAL COPY

Property of Cook County Clerk's Office

44-00000

UNOFFICIAL COPY

9 0 5 2 5 4 6 1

reasonable attorneys' fees, incurred by Mortgagee in connection with the review and processing of the request for the Subordinate Lien.

(b) General. Mortgagor will pay when due the indebtedness secured by the Subordinate Lien and will otherwise pay and perform all its obligations thereunder. Default under the Subordinate Lien shall, at the option of Mortgagee, constitute an event of default hereunder. Consent to the Subordinate Lien does not constitute consent by Mortgagee to any other or further encumbrance or lien against the Property or any part thereof or interest therein.

6. Default.

(a) The occurrence of any one or more of the following shall constitute an event of default under this Note:

(i) Failure to make any payment of principal or interest when due hereon, followed by the failure to make such payment within ten (10) days after written notice thereof given to Borrower by Lender; provided, however, that Lender shall not be obligated to give Borrower written notice prior to exercising its remedies with respect to such default if Lender had previously given Borrower during that calendar year a notice of default for failure to make a payment of principal or interest hereon.

(ii) The occurrence of any other event of default under the Mortgage referred to in paragraph 9 below.

(b) *Time is of the essence.* In the event of default under this Note, (i) the entire principal balance hereof and all accrued interest shall, at the option of Lender, without notice, bear interest at a rate from time to time equal to five (5) percentage points over what would otherwise be the Note rate (or the maximum rate permitted by applicable law if that is less) from the date of default until the default is cured and (ii) the entire principal balance hereof and all accrued interest shall immediately become due and payable at the option of Lender, without notice. Lender's failure to exercise any option hereunder shall not constitute a waiver of the right to exercise the same in the event of any subsequent default.

7. Late Charges.

Borrower acknowledges that, if any payment under this Note is not made when due, Lender will as a result thereof incur costs not contemplated by this Note, the exact amount of which would be extremely difficult or impracticable to ascertain. Such costs include without limitation processing and accounting charges. Accordingly, Borrower hereby agrees to pay to Lender with respect to each payment which is not received by Lender within ten (10) days after such payment is due under this Note a late charge equal to FIVE PERCENT (5%) of the amount of the payment. Borrower and Lender agree that such late charge represents a fair and reasonable estimate of the costs Lender will incur by reason of such late payment. Acceptance of such late charge by Lender shall in no event constitute a waiver of the default with respect to the overdue amount, and shall not prevent Lender from exercising any of the other rights and remedies available to Lender.

8. Costs and Attorneys' Fees.

If there is a default under this Note and Lender consults an attorney regarding the enforcement of any of its rights under this Note or the Mortgage, or if this Note is placed in the hands of an attorney for

UNOFFICIAL COPY

With reference to the above-mentioned...

It is hereby certified that the above-mentioned...

and shall be subject to the provisions of the...

and shall be subject to the provisions of the...

and shall be subject to the provisions of the...

and shall be subject to the provisions of the...

and shall be subject to the provisions of the...

and shall be subject to the provisions of the...

and shall be subject to the provisions of the...

Property of Cook County Clerk's Office

101-25300

collection, or if suit be brought to enforce this Note or the Mortgage, Borrower promises to pay all costs thereof, including attorneys' fees. Said costs and attorneys' fees shall include, without limitation, costs and attorneys' fees in any appeal or in a proceeding under any present or future federal bankruptcy act or state receivership.

9. Security.

This Note is secured by a Mortgage, Assignment of Rents and Leases, Security Agreement and Fixture Financing Statement, ("Mortgage") and a separate Assignment of Rents and Leases ("Assignment") covering property located in DuPage County, Illinois. It is also secured by a Mortgage, Security Agreement and Fixture Financing Statement covering property located in Cook County, Illinois.

10. Waiver of Presentment, Etc.

Borrower hereby waives presentment and demand for payment, notice of dishonor, protest and notice of protest.

11. Non-Recourse Debt.

Borrower is hereby released from all personal liability hereunder to the extent such release does not operate to invalidate the lien of the Mortgage securing this Note. In the event of foreclosure of the Mortgage or other enforcement of the collection of the indebtedness evidenced by this Note, Lender agrees, and any holder hereof shall be deemed by acceptance hereof to have agreed, not to take a deficiency judgment against Borrower with respect to said indebtedness. Notwithstanding the foregoing, however, Borrower shall be fully and personally liable to the holder of this Note:

- (i) For all damages suffered by the holder on account of waste, fraud or willful misrepresentation;
- (ii) For the retention of any rental income, security deposits or other income arising with respect to the property encumbered by the Mortgage collected by Borrower after an event of default has occurred under this Note and prior to the cure (if any) of such default and then to the extent of the income so retained;
- (iii) For any delinquent property taxes or assessments;
- (iv) For the replacement cost of any personal property or fixtures encumbered by the Mortgage which are removed or disposed of by Borrower and not replaced as required by the Mortgage and then to the extent of the replacement cost of such personal property or fixtures;
- (v) For the misapplication of any proceeds to the full extent of misapplied proceeds under any insurance policies or awards resulting from condemnation or the exercise of the power of eminent domain or by reason of damage or destruction to any portion of the property encumbered by the Mortgage or any building or buildings located thereon; and
- (vi) For all damages, liabilities, costs and expenses, including attorneys' fees, incurred by the holder on account of breach of covenant, breach of warranty or misrepresentation by Borrower under the Mortgage with respect to hazardous, toxic and dangerous wastes, substances and materials.

The foregoing limitation on personal liability is not intended and shall not be deemed to constitute a forgiveness of the indebtedness evidenced by this Note or a release of the obligation to repay said

UNOFFICIAL COPY

State of Illinois
Department of Public Safety
State Police

Illinois State Police
Chicago, Illinois
Illinois State Police
Chicago, Illinois

Illinois State Police

Illinois State Police
Chicago, Illinois
Illinois State Police
Chicago, Illinois

Illinois State Police

Illinois State Police
Chicago, Illinois
Illinois State Police
Chicago, Illinois

Illinois State Police
Chicago, Illinois
Illinois State Police
Chicago, Illinois

Illinois State Police
Chicago, Illinois
Illinois State Police
Chicago, Illinois

Illinois State Police
Chicago, Illinois
Illinois State Police
Chicago, Illinois

Illinois State Police
Chicago, Illinois
Illinois State Police
Chicago, Illinois

Property of Cook County Clerk's Office

100-100000

UNOFFICIAL COPY

9 0 5 2 5 4 6 1

indebtedness according to the terms and provisions hereof, but shall operate solely to limit the remedies otherwise available to the holder hereof for the enforcement and collection of such indebtedness. As used in this paragraph, the term "Borrower" includes (i) Borrower (and each of them, if more than one), (ii) all general partners of any Borrower which is a partnership, and (iii) all joint venturers of any Borrower which is a joint venture. The personal liability hereunder of all persons included within the term "Borrower" shall be joint and several. The provisions of this paragraph shall control over any conflicting provisions of this Note, the Mortgage or any other instrument or document executed in connection with the indebtedness evidenced hereby.

12. Loan Charges.

Interest, fees and charges collected or to be collected in connection with the indebtedness evidenced hereby shall not exceed the maximum, if any, permitted by any applicable law. If any such law is interpreted so that said interest, fees and/or charges would exceed any such maximum and Borrower is entitled to the benefit of such law, then: (A) such interest, fees and/or charges shall be reduced by the amount necessary to reduce the same to the permitted maximum; and (B) any sums already collected from Borrower which exceeded the permitted maximum will be refunded. Lender may choose to make the refund either by treating the payments, to the extent of the excess, as prepayments of principal or by making a direct payment to Borrower. No prepayment premium shall be assessed on prepayments under this paragraph. The provisions of this paragraph shall control over any inconsistent provision of this Note or the Mortgage or any other document executed in connection with the indebtedness evidenced hereby.

13. Governing Law.

This Note shall be construed, enforced and otherwise governed by the laws of the State of Illinois.

14. Lender.

As used herein, the term "Lender" shall mean holder and owner of this Note.

Michael Pokorny

Angela Pokorny

90525461

