

UNOFFICIAL COPY

9 0 0 1 3 30013458

0995K
12-21-89

COOK COUNTY, ILLINOIS

(2)

NOV 21 1989 11:43

90013458

MORTGAGE

\$24.00

THIS MORTGAGE, made this 7th day of November, 1989, by POP-OPS INC., an Illinois corporation ("Mortgagor"), to THE NORTHERN TRUST COMPANY, an Illinois banking corporation with an office at 50 South LaSalle Street, Chicago, Illinois 60675 ("Mortgagee");

WHEREAS, Mortgagor is the legal owner and holder of a leasehold estate in the real estate described in Exhibit A attached hereto and by this reference made a part hereof, which real estate forms a portion of the Premises hereinafter described; and

WHEREAS, Mortgagor desires Mortgagee to lend money to Mortgagor and Mortgagee is willing to lend provided that Mortgagor will grant a mortgage as security for such indebtedness; and

WHEREAS, Mortgagor has executed and delivered to Mortgagee a note dated December 15, 1988, payable to the order of Mortgagee in the amount of FOUR MILLION AND NO/100 UNITED STATES DOLLARS (\$4,000,000), bearing interest at the rate per annum (computed on the basis of a 360-day year and actual days elapsed) before maturity of five-eighths of one percent (5/8ths of 1%) plus the Prime Rate (which shall mean at any time the rate per year announced by Mortgagee called its prime rate, which rate may not at any time be the lowest rate charged by Mortgagee, with the rate of interest under the note to change on the date set forth in each announcement) from time to time in effect, with principal and interest payable and accrued as provided therein and a rate after maturity (whether by acceleration or otherwise) that is three percent (3%) in excess of the Prime Rate (but not less than the Prime Rate in effect at maturity) (the "Default Rate"), with the unpaid balance and any accrued interest being due and payable on December 15, 1990 (the foregoing note, together with all amendments, extensions, restatements and replacements thereto or thereof, the "Note"); and

NOW, THEREFORE, to secure the payment of the principal of and interest on the Note according to its tenor and effect and all replacements, renewals, and substitutions of the Note, and to secure the payment of all other sums which may at any time be due

Permanent Tax Index Numbers:

SEE EXHIBIT A FOR NUMBERS

Address of Premises:

4310 St. Charles Road
Bellwood, Illinois

This document prepared by and to be returned after recording to:

Alvin L. Kruse, Esq.
Seyfarth, Shaw, Fairweather &
Geraldson
55 East Monroe Street
Chicago, Illinois 60603

BOX 333 - TH

90013458

72-25-756 D2

UNOFFICIAL COPY

90013458

and owing or required to be paid as herein provided (the "Indebtedness Hereby Secured"), and the performance and observance of all of the covenants, agreements and provisions herein and in the Note contained, and in consideration of the premises and for other good and valuable considerations, the receipt and sufficiency whereof are hereby acknowledged by Mortgagor, Mortgagor DOES HEREBY GRANT, DEMISE, RELEASE, ALIEN, MORTGAGE, WARRANT, and CONVEY unto Mortgagee, its successors and assigns forever, the real estate described in Exhibit A attached hereto and by this reference made a part hereof (which, together with the property mentioned in the next succeeding paragraphs hereto, is called the "Premises");

TOGETHER with all right, title and interest of Mortgagor, including any after-acquired title or reversions, in and to the beds of the ways, streets, avenues and alleys adjoining the aforesaid real estate;

TOGETHER with all and singular the tenements, hereditaments, easements, appurtenances, passages, waters, water courses, riparian rights, other rights, liberties and privileges thereof or in any way now or hereafter appertaining to said real estate, including any other claim at law or in equity as well as any after-acquired title and the reversions and remainder and remainders hereof;

TOGETHER with all buildings and improvements of every kind and description now or hereafter erected or placed thereon, and all fixtures, furnishings and equipment now or hereafter owned by Mortgagor and attached to or forming a part of or used in connection with the aforesaid real estate and all renewals, replacements and substitutions thereof or substitutions therefor, whether or not attached to said buildings, it being mutually agreed that all of the aforesaid property owned by Mortgagor and placed on the aforesaid realty shall, so far as permitted by law, be deemed to be fixtures, a part of the realty, and security for the Indebtedness Hereby Secured;

TOGETHER with all right, title, estate and interest of Mortgagor in and to the Premises, property, improvements, furniture, furnishings, apparatus and fixtures hereby conveyed, assigned, pledged and hypothecated, and all right to retain possession of the Premises after default in payment or breach of any covenant herein contained; and

TOGETHER with all awards and other compensation heretofore or hereafter to be made to the present and all subsequent owners of the Premises for any taking by eminent domain, either permanent or temporary, of all or any part of the Premises or any easement or appurtenance thereof, including severance and consequential damage and change in grade of streets, which said awards and compensation are hereby assigned to Mortgagee.

UNOFFICIAL COPY

9 0 0 1 3 4 5 8

TO HAVE AND TO HOLD the Premises, and all other above-described property and rights, unto Mortgagee, its successors and assigns, forever; Mortgagor hereby **RELEASING AND WAIVING** all rights under and by virtue of the homestead exemption laws of the State of Illinois.

PROVIDED, NEVERTHELESS, that if Mortgagor shall pay when due the Indebtedness Hereby Secured and Mortgagor shall duly and timely perform and observe all of the terms, provisions, covenants and agreements herein provided to be performed and observed by Mortgagor, then this Mortgage shall cease and become void and of no effect, otherwise to remain in full force and effect.

MORTGAGOR COVENANTS AND AGREES AS FOLLOWS:

1. Payment of Indebtedness. Mortgagor shall pay when due (a) the principal of and interest and premium, if any, on the indebtedness evidenced by the Note, and (b) all other Indebtedness Hereby Secured; and Mortgagor shall duly and punctually perform and observe all of the terms, provisions, conditions, covenants and agreements on Mortgagor's part to be performed and observed as provided herein; and this Mortgage shall secure such payment, performance and observance.

2. Maintenance, Repair, Restoration, Liens, etc. Mortgagor shall: (a) keep the Premises in good condition and repair, without waste, and free from mechanic's, materialmen's or like liens or claims or other liens or claims for lien; (b) comply with all requirements of law, municipal ordinances or restrictions and covenants of record with respect to the Premises and the use thereof; (c) suffer or permit no unlawful use of, or nuisance to exist upon, the Premises, and (d) cause the Premises to be managed in a competent and professional manner.

3. Other Liens. Except as otherwise expressly provided herein, Mortgagor shall not create or suffer to exist any mortgage, lien, charge or encumbrance to attach to the Premises, whether inferior or superior to the lien of this Mortgage, excepting only the lien of real estate taxes and assessments not due or delinquent.

4. Taxes. Mortgagor shall pay before any penalty attaches all general and special taxes, assessments, water charges, sewer charges, and other fees, taxes, charges and assessments of every kind and nature whatsoever (all such, the "Taxes"), whether or not assessed against Mortgagor, if applicable to the Premises or any interest therein, or the Indebtedness Hereby Secured, or any obligation or agreement secured hereby; and Mortgagor shall furnish to Mortgagee duplicate receipts therefor.

5. Insurance. Mortgagor at its own expense will keep insured all of the buildings and improvements now or hereafter

UNOFFICIAL COPY

9 0 0 1 3 4 5 3

included within the Premises, and each and every part and parcel thereof against such risks as Mortgagee may require.

All policies of insurance shall be with companies, and in form and amounts satisfactory to Mortgagee. All policies of casualty insurance shall have attached thereto mortgagee clauses or endorsements in favor of and with loss payable to and in form satisfactory to Mortgagee and shall provide that such insurance may not be cancelled or altered as to Mortgagee without at least ten (10) days' prior written notice to Mortgagee.

6. Proceeds of Insurance. Mortgagor shall give Mortgagee prompt notice of any damage to or destruction of the Premises, and Mortgagee may apply the proceeds of insurance consequent upon any insured casualty upon the Indebtedness Hereby Secured, in such order or manner as Mortgagee may elect.

Notwithstanding the foregoing provisions of this paragraph 6, and subject to the terms and conditions of the Lease referred to in Exhibit A hereto, in the event of any such damage or destruction, Mortgagee shall make the proceeds of insurance received as a result of such damage or destruction available for the repair and restoration of the Premises, subject to the following conditions: (i) that there does not then exist any Event of Default under this Mortgage; (ii) that all then existing franchise and development agreements relating to the Premises shall continue in full force and effect; (iii) that Mortgagee shall first be given satisfactory proof that such improvements have been fully repaired and restored, or that by the expenditure of such money will be fully repaired and restored, free and clear of all liens; (iv) that in the event such proceeds shall be insufficient to repair and restore the Premises, Mortgagor shall deposit promptly with Mortgagee the amount of such deficiency; (v) that in the event Mortgagor shall fail within a reasonable time to repair and restore the Premises, then Mortgagee, at its option, may repair and restore the Premises for or on behalf of Mortgagor and for such purpose may do all necessary acts, including using said funds deposited by Mortgagor as aforesaid; (vi) that waiver of the right of subrogation shall be obtained from any insurer under such policies of insurance who, at that time, claims that no liability exists as to Mortgagor or the then owner or the assured under such policies; (vii) that such insurance proceeds shall be disbursed only upon presentation of customary owner's and contractors' sworn statements and affidavits and mechanics lien waivers and customary title insurance endorsements over mechanics' lien rights and claims; and (viii) that the excess of said insurance proceeds above the amount necessary to complete such repair and restoration shall be applied as a credit upon any portion, as selected by Mortgagee, of the Indebtedness Hereby Secured. In the event any of the said conditions are not or cannot be satisfied, then the alternate disposition of such insurance proceeds as provided in the foregoing provisions of this paragraph 6 shall become applicable. Under no circumstances shall Mortgagee become personally obligated to take any action to repair and restore the Premises.

90013453

UNOFFICIAL COPY

9 0 0 1 3 4 5 8

7. Condemnation. Mortgagor hereby assigns, transfers and sets over unto Mortgagee the entire proceeds of any award or claim for damages for any of the Premises taken or damaged under the power of eminent domain or by condemnation including any payments made in lieu of or in settlement of a claim or threat of condemnation. Mortgagee may elect to apply the proceeds of the award upon or in reduction of the Indebtedness Hereby Secured then most remotely to be paid, whether due or not. No interest shall be allowed to Mortgagor on account of any award held by Mortgagee.

8. Stamp Tax. If, by the laws of the United States of America or of any state or subdivision thereof, any tax is used or becomes due in respect of the issuance of the Note or this Mortgage, or any related document, Mortgagor shall pay such tax in the manner required by such law.

9. Extensions of Time and Amendments on Junior Liens and Others. If the payment of the Indebtedness Hereby Secured, or any part thereof, be extended or varied, or if any part of the security therefor be released, all persons now or at any time hereafter liable therefor, or interested in the Premises, shall be held to assent to such extension, variation or release, and their liability, and the lien, and all provisions hereof, shall continue in full force and effect, without obtaining the consent of the holder of such junior lien and without the lien of this Mortgage losing its priority over the rights of any such junior lien.

10. Performance of Mortgagor's Obligations. In case of default herein, Mortgagee, either before or after acceleration of the Indebtedness Hereby Secured or the foreclosure of the lien hereof and during the period of redemption, if any, may, but shall not be required to, make any payment or perform any act herein required of Mortgagor (whether or not Mortgagor is personally liable therefor) in any form and manner deemed expedient to Mortgagee; and Mortgagee may, but shall not be required to, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting the Premises or contest any tax or assessment, operate and manage the Premises and such improvements and pay operating costs and expenses, including management and attorneys' fees, of every kind and nature in connection therewith, so that the Premises and improvements shall be operational and usable for their intended purposes. Mortgagor hereby appoints Mortgagee as its attorney in fact, which appointment is irrevocable and coupled with an interest, for purposes of performing acts, and signing and delivering any agreement, document or instrument, on behalf of Mortgagor in accordance with this Paragraph. All monies paid for any of the purposes herein authorized, and all expenses paid or incurred in connection therewith, shall be so much additional Indebtedness Hereby Secured, whether or not they exceed the face amount of the Note, and shall become immediately

90013458

UNOFFICIAL COPY

9 0 0 1 3 4 5 8

due and payable without notice, and with interest thereon at the Default Rate.

11. Inspection. Mortgagee shall have the right to inspect the Premises and all books, records and documents relating thereto at all reasonable times, and access thereto shall be permitted for that purpose.

12. Financial Statements. If required by Mortgagee, Mortgagor will furnish to Mortgagee financial and operating statements of the Premises for such periods, in such form and at such times as required by Mortgagee, all at Mortgagor's expense.

13. Uniform Commercial Code. This Mortgage constitutes a Security Agreement under the Illinois Uniform Commercial Code (the "Code") with respect to any part of the Premises which may or might now or hereafter be or be deemed to be personal property, fixtures or property other than real estate (all for the purposes of this Paragraph 13 called "Collateral"); all of the terms, provisions, conditions and agreements contained in this Mortgage pertain and apply to the Collateral as fully and to the same extent as to any other property comprising the Premises; in addition thereto:

(a) Mortgagor represents that it (being the Debtor as that term is used in the Code) is and will be the true and lawful owner of the Collateral, subject to no liens, charges or encumbrances other than this Mortgage or in favor of Mortgagee.

(b) The Collateral will be kept at the real estate comprised within the Premises, and will not be removed therefrom without prior written the consent of Mortgagee (being the Secured Party as that term is used in the Code) or any other person and the Collateral may be affixed to such real estate but will not be affixed to any other real estate.

(c) Mortgagor will at its own cost and expenses, upon demand, furnish to Mortgagee such further information and will execute and deliver to Mortgagee such financing statements and other documents in form satisfactory to Mortgagee and will do all such acts and things as Mortgagee may at any time or from time to time request to establish and maintain a first-priority perfected security interest in the Collateral as security for the Indebtedness Hereby Secured, subject to no prior liens or encumbrances and Mortgagor will pay the cost of filing the same or filing or recording such financing statements or other documents, and this instrument, in all public offices wherever filing or recording is deemed by Mortgagee to be desirable.

(d) Upon any Event of Default hereunder and at any time thereafter, Mortgagee at its option may

UNOFFICIAL COPY

9 0 0 1 3 1 5 0

declare the Indebtedness Hereby Secured immediately due and payable, all as more fully set forth in Paragraph 14 hereof, and thereupon Mortgagee shall have the remedies of a secured party under the Code. Any foreclosure sale may be held as part of and in conjunction with any foreclosure sale of the real estate comprised within the Premises, the Collateral and real estate to be sold as one lot if Mortgagee so elects. The net proceeds realized upon any such disposition, after deduction for the expenses or retaking, holding, preparing for sale, selling or the like and the attorneys' fees and legal expenses incurred by Mortgagee, shall be applied against the Indebtedness Hereby Secured. Mortgagee will account to Mortgagor for any surplus realized on such disposition.

(e) The remedies of the Mortgagee hereunder are cumulative and the exercise of any one or more of the remedies provided for herein or under the Code shall not be construed as a waiver of any of the other remedies of Mortgagee, including having the Collateral deemed part of the realty upon any foreclosure thereof so long as any part of the Indebtedness Hereby Secured remains unsatisfied.

(f) This Mortgage is intended to be a financing statement within the purview of Section 9-402(6) of the Code with respect to the Collateral and the goods described at the beginning of this Mortgage, which goods are or are to become fixtures relating to the Premises. The addresses of Mortgagor (Debtor) and Mortgagee (Secured Party) are set forth in Paragraph 26 hereof. This Mortgage is to be filed for record with the Recorder of Deeds of the County or Counties where the Premises are located. Mortgagor is the record owner of the Premises.

14. Events of Default. If one or more of the following events (herein called "Events of Default") shall occur:

(a) Default be made in the due and punctual payment of the Note or any installment thereof, either principal or interest, as and when the same is due and payable, or if default be made in the making of any payment of monies required to be made hereunder or under the Note; or

(b) If, without the prior written consent of Mortgagee, Mortgagor shall create, effect or consent to or shall suffer or permit (or shall contract for or agree to) any conveyance, sale, assignment, transfer, or alienation of the Premises or any part thereof or interest therein (including without limitation of any beneficial interest), in each case whether any such conveyance, sale, assignment, transfer, lien, or

90013150

UNOFFICIAL COPY

9 0 0 1 5 4 5 8

alienation is effected directly, indirectly, voluntarily, or involuntarily, by operation of law or otherwise; provided, however, that it shall not constitute an Event of Default under this subparagraph (b) if such conveyance, sale, assignment, transfer or alienation shall be made in accordance with the provisions of the Revolving Credit Agreement of even date herewith pursuant to which the loan evidenced by the Note is being made by Mortgagee; or

(c) If (and for the purpose of this subsection (c) of this Paragraph 14 only, the term Mortgagor shall mean and include not only Mortgagor but any beneficiary of a trustee mortgagor),

(i) Mortgagor shall file a petition in voluntary bankruptcy under any chapter of the federal bankruptcy code, or any similar law for the relief of debtors, state or federal, now or hereafter in effect; or

(ii) Mortgagor shall file an answer admitting insolvency or inability to pay its debts; or

(iii) Within 30 days after the filing against Mortgagor of any involuntary proceeding under the federal bankruptcy code or similar law for the relief of debtors, such proceedings shall not have been vacated or stayed; or

(iv) Mortgagor shall be adjudicated a bankrupt, or a trustee or receiver shall be appointed for Mortgagor for all or a material part of Mortgagor's property or the Premises, in any involuntary proceeding, or any court shall have taken jurisdiction of all or the major part of Mortgagor's property or the Premises in any involuntary proceeding for the reorganization, dissolution, liquidation or winding up of Mortgagor, and such trustee or receiver shall not be discharged or such jurisdiction relinquished or vacated or stayed on appeal or otherwise stayed within 30 days; or

(v) Mortgagor shall make an assignment for the benefit of creditors or shall admit in writing its inability to pay its debts generally as they become due or shall consent to the appointment of a receiver of trustee or liquidator of all or a material part of its property, or the Premises; or

(d) If default shall continue for 10 days after notice thereof by Mortgagee to Mortgagor in the due and punctual performance or observance of any other agreement or conditions herein;

UNOFFICIAL COPY

9 0 0 1 3 4 5 8

then Mortgagee is hereby authorized and empowered, at its option, and without affecting the lien hereby created or the priority of said lien or any right of Mortgagee hereunder to declare, without further notice, all Indebtedness Hereby Secured to be immediately due and payable, whether or not such default be thereafter remedied by Mortgagor, and Mortgagee may immediately proceed to foreclose this Mortgage or to exercise any right, power or remedy provided by this Mortgage, the Note, or by law or in equity conferred.

15. Possession by Mortgagee. When the Indebtedness Hereby Secured shall become due, whether by acceleration or otherwise, Mortgagee shall have the right to enter into and upon the Premises and take possession thereof or to appoint an agent or trustee for the collection of the rents, issues and profits of the Premises. The net income, after allowing a reasonable fee for the collection thereof and for the management of the Premises, may be applied to the payment of Taxes, insurance premiums and other charges applicable to the Premises, or in reduction of the Indebtedness Hereby Secured as Mortgagee may elect; the rents, issues and profits of and from the Premises are hereby specifically pledged to the payment of the Indebtedness Hereby Secured.

16. Foreclosure. When the Indebtedness Hereby Secured, or any part thereof, shall become due, whether by acceleration or otherwise, Mortgagee shall have the right to foreclose the lien hereof for such Indebtedness or part thereof. In any suit to foreclose the lien hereof, there shall be allowed and included as additional Indebtedness in the decree of sale, all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for attorneys' fees, appraiser's fees, outlays for documentary and expert evidence, stenographer's charges, publication costs and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies and similar data and assurance with respect to title, as Mortgagee may deem necessary either to prosecute such suit or to evidence to bidders at sales which may be had pursuant to such decree, the true conditions of the title to or the value of the Premises. All expenditures and expenses of the nature mentioned in this Paragraph, and such other expenses and fees as may be incurred in the protection of the Premises and the maintenance of the lien of this Mortgage, including the fees of attorneys employed by Mortgagee in any litigation or proceedings affecting this Mortgage, the Note or the Premises, including probate and bankruptcy proceedings, or in preparation of the commencement or defense of any proceedings or threatened suit or proceeding, shall be so much additional Indebtedness Hereby Secured and shall be immediately due and payable by Mortgagor, with interest thereon at the Default Rate in the Note per annum until paid.

17. Receiver. Upon, or at any time after, the filing of a complaint to foreclose this Mortgage, the court in which such complaint is filed may appoint a receiver of the Premises. Such appointment may be made either before or after sale, without

900013458

UNOFFICIAL COPY

9 9 0 1 3 4 1 8

regard to solvency or insolvency of Mortgagor at the time of application for such receiver, and without regard to the then value of the Premises or whether the same shall be then occupied as a homestead or not; and Mortgagee hereunder or any employee or agent thereof may be appointed as such receiver. Such receiver shall have the power to collect the rents, issues and profits of the Premises during the pendency of such foreclosure suit and, in case of a sale and deficiency, during the full statutory period of redemption, if any, whether there be a redemption or not, and all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during the whole of said period.

18. Proceeds of Foreclosure Sale. The proceeds of any foreclosure sale of the Premises shall be distributed and applied in the following order of priority: First, on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in Paragraph 16 hereof; Second, to any of the Indebtedness Hereby Secured in such order as Mortgagee may elect in its sole discretion; and Third, any remaining amounts to Mortgagor and its successors or assigns, as their rights may appear.

19. Insurance Upon Foreclosure. In case of an insured loss after foreclosure proceedings have been instituted, the proceeds of any insurance policy or policies, shall be used to pay the amount due in accordance with any decree of foreclosure that may be entered in any such proceedings, and the balance, if any, shall be paid as the court may direct. In the case of foreclosure of this Mortgage, the court, in its decree, may provide that Mortgagee's clause attached to each of the casualty insurance policies may be cancelled and that the decree creditor may cause a new loss clause to be attached to each of said casualty insurance policies making the loss thereunder payable to said decree creditors. In the event of foreclosure sale, Mortgagee is hereby authorized, without the consent of Mortgagor, to assign any and all insurance policies to the purchaser at the sale, or to take such other steps as Mortgagee may deem advisable to cause the interest of such purchaser to be protected by any of the said insurance policies without credit or allowance to Mortgagor for prepaid premiums thereon.

20. Waiver by Mortgagor. Mortgagor hereby covenants that it will not at any time insist upon or plead, or in any manner whatsoever claim or take any advantage of, any stay, exemption, extension, or moratorium law now or at any time hereafter in force, nor claim, take or insist upon any benefit or advantage of or from any law now or hereafter in force providing for the valuation or appraisal of the Premises, or any part thereof, prior to any sale or sales thereof to be made pursuant to any provisions herein contained, or to any decree, judgment or other 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

3003358

UNOFFICIAL COPY

9 0 0 1 7 4 5 8

sold, or any part thereof, or relating to the marshalling thereof, upon foreclosure sale or other enforcement hereof. 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 acquiring any interest in or title to the Premises subsequent to the date hereof, it being the intent hereof that any and all such rights of redemption of Mortgagor and of all other persons, are and shall be deemed to be hereby waived to the full extent permitted by the Provisions of Illinois Revised Statutes, Chapter 77, Sections 18(a) and 18(b), and any statute enacted in replacement or substitution thereof, provided, however, that the foregoing waiver shall be deemed to be of no further force and effect with regard to Mortgagor in the event that any guarantor of the Indebtedness Hereby Secured shall pay to Mortgagee all such Indebtedness Hereby Secured prior to any such sale under order or decree of foreclosure.

21. Further Assurances. Mortgagor shall do, execute, acknowledge and deliver all and every further acts, deeds, conveyances, transfers and assurances necessary or proper, in the sole judgment of Mortgagee, for the better assuring, conveying, mortgaging, assigning and confirming unto Mortgagee all property mortgaged hereby or property intended so to be, whether now owned by Mortgagor or hereafter acquired.

22. Successors. In the event that the ownership of the Premises becomes vested in a person or persons other than Mortgagor, Mortgagee may, without notice to Mortgagor, deal with such successor or successors in interest of Mortgagor with reference to this Mortgage and the Indebtedness Hereby Secured in the same manner as with Mortgagor. Mortgagor shall give immediate written notice to Mortgagee of any conveyance, transfer or change of ownership of the Premises, but nothing in this Paragraph shall vary or negate the provisions of Paragraph 14 hereof.

23. Rights Cumulative. Each right, power and remedy herein conferred upon Mortgagee is cumulative and in addition to every other right, power or remedy, express or implied, given now or hereafter existing, at law or in equity, and each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient to Mortgagee and the exercise or the beginning of the exercise of one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy. No delay or omission of Mortgagee in the exercise of any right, power or remedy shall impair any such right, power or remedy, or be construed to be a waiver of any type.

24. Assigns. This Mortgage and each and every covenant, agreement and other provision hereof shall be binding upon Mortgagor and its successors and assigns (including, without limitation, each and every record owner from time to time of the

UNOFFICIAL COPY

9 0 0 1 5 8

Premises or any other person having an interest therein), and shall inure to the benefit of Mortgagee and its successors and assigns, provided that nothing herein shall vary or negate the provisions of Paragraph 14 hereof.

25. Time of the Essence. Time is of the essence of the Note, this Mortgage, and any other document evidencing or securing the Indebtedness Hereby secured.

26. Notices. Any notice which any party hereto may desire or may be required to give to any other party shall be in writing, and the mailing thereof by registered or certified mail, postage prepaid, return receipt requested, to the respective addresses of the parties set forth below, or to such other place as any party may by notice in writing designate for itself, shall constitute service of notice hereunder two business days after the mailing thereof:

- (a) If to Mortgagee: The Northern Trust Company, 50 South LaSalle Street, Chicago, Illinois 60675 (Attention: Division Head, West Division)
- (b) If to Mortgagor: POP-OPS INC., 111 East Wacker, Suite 1400, Chicago, Illinois 60601

Any such other notice may be served by personal delivery thereof to the other party, which delivery shall constitute service of notice hereunder on the date of such delivery.

IN WITNESS WHEREOF, Mortgagor has caused this Mortgage to be duly signed, sealed and delivered the day and year first above written.

POP-OPS INC.

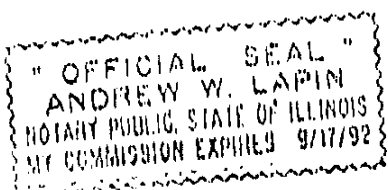
By Richard J. Friedman, Pres.
Title:

STATE OF ILLINOIS)

COUNTY OF COOK)

The foregoing instrument was acknowledged before me this 26th day of November, 1989, by Richard J. Friedman, President, of POP-OPS INC., an Illinois corporation, on behalf of the corporation.

Andrew W. Lapin
Notary Public



UNOFFICIAL COPY

EXHIBIT A

LEGAL DESCRIPTION OF PREMISES

The leasehold estate of Mortgagor as lessee under that certain Lease dated February 6, 1984, from Bank of Ravenswood, as Trustee under a Trust Agreement dated January 18, 1984, and known as Trust No. 25-6221, as lessor, to Melzer Restaurants, Inc., as lessee, and assigned by said Melzer Restaurants, Inc. to Sheldon Friedman by Assignment of Lease dated November 7, 1989, and assigned by said Sheldon Friedman to Mortgagor by Assignment of Lease dated November 7, 1989, as amended by Amendment to Lease Agreement dated November 7, 1989, by and between said lessor and Sheldon Friedman, covering the following described real estate located in Cook County, Illinois:

Lots 1 to 7 in Block 5 in Hulbert's St. Charles Road Subdivision, being a subdivision of the North East 1/4 of Section 8, Township 39 North, Range 12 East of the Third Principal Meridian, in Cook County, Illinois.

PERMANENT TAX NUMBERS: 15-08-225-004, LOT 7; 15-08-225-005, LOT 6; 15-08-225-006, LOT 5; 15-08-225-007, LOT 4; 15-08-225-008, LOT 3; 15-08-225-009, LOT 2; AND 15-08-225-010, LOT 1.