

# UNOFFICIAL COPY

## SUBORDINATE MORTGAGE (ILLINOIS FORM)

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THIS MORTGAGE made this 23rd day of October, 1989, by

Harris Trust and Savings Bank, not personally, but solely as Trustee under Trust Agreement dated April 10, 1989 and known as Trust No. 94444,

(herein, whether one or more, and if more than one jointly and severally, called the "Mortgagor"), whose address is 430 West Erie, Chicago, Illinois 60610

to ZVI Trading Corp.-Employee's Money Purchase Pension Plan and Trust

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(herein, together with its successors and assigns, including each and every from time to time holder of the Note hereinafter referred to, called the "Mortgagee"), whose address is c/o Hershel Herrendorf, 180 East Pearson, Suite 5701, Chicago, Illinois 60611.

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10000  
5/10/89  
5/8/89

Mortgagee and the beneficiary of Mortgagor

WHEREAS, the Mortgagor has concurrently herewith, executed and delivered to the Mortgagee, the Mortgagor's installment note (herein called the "Note") dated the date hereof, in the principal sum of Nine Hundred Fifty Thousand Dollars (\$950,000.00)

bearing interest at the rate specified therein, due in installments and in any event on APRIL 30, 1992, unless extended to APRIL 30, 1994 pursuant to the terms of that certain Loan Agreement of even date herewith (the "Loan Agreement") entered into by and between payable to the order of the Mortgagee, and otherwise in the form of Note attached hereto as Exhibit A and incorporated herein and made a part hereof by this reference with the same effect as if set forth at length; and

WHEREAS, the indebtedness evidenced by the Note, including the principal thereof and interest and premium, if any, thereon, and any extensions and renewals thereof, in whole or in part, and any and all other sums which may be at any time due or owing or required to be paid as herein or in Note provided, are herein called the "Indebtedness Hereby Secured."

NOW, THEREFORE, THIS MORTGAGE WITNESSETH:

That to secure the payment of the principal of and interest and premium, if any, on the Note according to its tenor and effect and to secure the payment of all other Indebtedness Hereby Secured 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) and in consideration of the premises and Ten Dollars (\$10) in hand paid by the Mortgagee to the Mortgagor, and for other good and valuable

*[Handwritten signature]*

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considerations, the receipt and sufficiency of all of which is hereby acknowledged by the Mortgagor, the Mortgagor does hereby GRANT, RELEASE, REMISE, ALIEN, MORTGAGE and CONVEY unto the Mortgagee all and sundry rights, interests and property hereinafter described (all herein together called the "Premises"):

- (a) All of the real estate (herein called the "Real Estate") described in Exhibit B attached hereto and made a part hereof;
- (b) All buildings and other improvements now or at any time hereafter constructed or erected upon or located at the Real Estate, together with and including, but not limited to, all fixtures, equipment, machinery, appliances and other articles and attachments now or hereafter forming part of, attached to or incorporated in any such buildings or improvements (all herein generally called the "Improvements");
- (c) All privileges, reservations, allowances, hereditaments, tenements and appurtenances now or hereafter belonging or pertaining to the Real Estate or Improvements;
- (d) All leasehold estates, right, title and interest of Mortgagor in any and all leases, subleases, arrangements or agreements relating to the use and occupancy of the Real Estate and Improvements or any portion thereof, now or hereafter existing or entered into (all herein generally called "Leases"), together with all cash or security deposits, advance rentals and other deposits or payments of similar nature given in connection with any Leases;
- (e) All rents, issues, profits, royalties, income, avails and other benefits now or hereafter derived from the Real Estate and Improvements, under Leases or otherwise (all herein generally called "Rents"), subject to the right, power and authority given to the Mortgagor in the Assignment hereinafter referred to, to collect and apply the Rents;
- (f) All right, title and interest of Mortgagor in and to all options to purchase or lease the Real Estate or Improvements, or any portion thereof or interest therein, or any other rights, interests or greater estates in the rights and properties comprising the Premises, now owned or hereafter acquired by Mortgagor;
- (g) Any interests, estates or other claims, both in law and in equity, which Mortgagor now has or may hereafter acquire in the Real Estate and Improvements or other rights, interests or properties comprising the Premises now owned or hereafter acquired;
- (h) All right, title and interest of Mortgagor now owned or hereafter acquired in and to (i) any land or vaults lying within the right-of-way of any street or alley, open or proposed, adjoining the Real Estate; (ii) any and all alleys, sidewalks, strips and gores of land adjacent to or used in connection with the Real Estate and Improvements; (iii) any and all rights and interests of every name or nature forming part of or used in connection with the Real Estate and/or the operation and maintenance of the Improvements; (iv) all easements, rights-of-way and rights used in connection with the Real Estate or Improvements or as a means of access thereto, and (v) all water rights and shares of stock appurtenant to the same;
- (i) All right, title and interest of Mortgagor in and to all tangible personal property (herein called "Personal Property"), owned by Mortgagor and now or at any time hereafter located in, on or at the Real Estate or Improvements or used or useful in connection therewith, (whether or not affixed thereto) including, but not limited to:
  - (i) all furniture, furnishings and equipment furnished by Mortgagor to tenants of the Real Estate or Improvements;
  - (ii) all building materials and equipment located upon the Real Estate and intended to be incorporated in the Improvements now or hereafter to be constructed thereon, whether or not yet incorporated in such Improvements;
  - (iii) all machines, machinery, fixtures, apparatus, equipment or articles used in supplying heating, gas, electricity, air-conditioning, water, light, power, sprinkler protection, waste removal, refrigeration and ventilation, and all fire sprinklers, alarm systems, electronic monitoring equipment and devices;
  - (iv) all window or structural cleaning rigs, maintenance equipment and equipment relating to exclusion of vermin or insects and removal of dust, dirt, debris, refuse or garbage;
  - (v) all lobby and other indoor and outdoor furniture, including tables, chairs, planters, desks, sofas, shelves, lockers and cabinets, wall beds, wall safes, and other furnishings;

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- (vi) all rugs, carpets and other floor coverings, draperies, drapery rods and brackets, awnings, window shades, venetian blinds and curtains;
- (vii) all lamps, chandeliers and other lighting fixtures;
- (viii) all recreational equipment and materials;
- (ix) all office furniture, equipment and supplies;
- (x) all kitchen equipment, including refrigerators, ovens, dishwashers, range hoods and exhaust systems and disposal units;
- (xi) all laundry equipment, including washers and dryers;
- (xii) all tractors, mowers, sweepers, snow removal equipment and other equipment used in maintenance of exterior portions of the Real Estate and Improvements; and
- (xiii) all maintenance supplies and inventories;

provided that the enumeration of any specific articles of Personal Property set forth above shall in no way exclude or be held to exclude any items of property not specifically enumerated; but provided that there shall be excluded from and not included within the term "Personal Property" as used herein and hereby mortgaged and conveyed, any equipment, trade fixtures, furniture, furnishings or other property of tenants of the Premises;

- (j) All the estate, interest, right, title or other claim or demand which Mortgagor now has or may hereafter have or acquire with respect to (i) the proceeds of insurance in effect with respect to the Premises, and (ii) any and all awards, claims for damages and other compensation made for or consequent upon the taking by condemnation, eminent domain or any like proceeding, or by any proceeding or purchase in lieu thereof, of the whole or any part of the Premises, including, without limitation, any awards and compensation resulting from a change of grade of streets and awards and compensation for severance damages (all herein generally called "Awards").

TO HAVE AND TO HOLD all and sundry the Premises hereby mortgaged and conveyed or intended so to be, together with the rents, issues and profits thereof, unto the Mortgagee forever, free from all rights and benefits under and by virtue of the Homestead Exemption Laws of the State of Illinois (which rights and benefits are hereby expressly released and waived), for the uses and purposes herein set forth, together with all right to retain possession of the Premises after any default in the payment of all or any part of the Indebtedness Hereby Secured, or the breach of any covenant or agreement herein contained, or upon the occurrence of any Event of Default as hereinafter defined.

## FOR THE PURPOSE OF SECURING:

- (a) Payment of the indebtedness with interest thereon evidenced by the Note and any and all modifications, extensions and renewals thereof, and all other Indebtedness Hereby Secured;
- (b) Performance and observance by Mortgagor of all of the terms, provisions, covenants and agreements on Mortgagor's part to be performed and observed under the Loan Agreement;
- ~~(c) Performance and observance by Mortgagor of all of the terms, provisions, covenants and agreements on Mortgagor's part to be performed and observed under the Assignment referred to in Section 26 hereof;~~
- (d) Performance by any Guarantor of its obligations under any Guaranty or other instrument given to further secure the payment of the Indebtedness Hereby Secured or the performance of any obligation secured hereby;

provided that the aggregate of the Indebtedness Hereby Secured shall at no time exceed \$100,000,000.

PROVIDED, NEVERTHELESS, and these presents are upon the express condition that if all of the Indebtedness Hereby Secured shall be duly and punctually paid and all the terms, provisions, conditions and agreements herein contained on the part of the Mortgagor to be performed or observed shall be strictly performed and observed, then this Mortgage and the estate, right and interest of the Mortgagee in the Premises shall cease and become void and of no effect.

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AND IT IS FURTHER AGREED THAT: 3 7 1 2 7 1 2 9

**L. Payment of Indebtedness.** The Mortgagor will duly and promptly pay each and every installment of the principal of and interest and premium, if any, on the Note, and all other Indebtedness Hereby Secured, as the same become due, and will duly perform and observe all of the covenants, agreements and provisions herein or in the Note provided on the part of the Mortgagor to be performed and observed.

**2. Maintenance, Repair, Restoration, Prior Liens, Parking.** The Mortgagor will:

- (a) Promptly repair, restore or rebuild any Improvements now or hereafter on the Premises which may become damaged or be destroyed, whether or not proceeds of insurance are available or sufficient for the purpose;
- (b) Keep the Premises in good condition and repair, without waste, and free from mechanics', materialmen's or like liens or claims or other liens or claims for lien not expressly subordinated to the lien hereof;
- (c) Pay when due any indebtedness which may be secured by a lien or charge on the Premises on a parity with or superior to the lien hereof, and upon request exhibit satisfactory evidence of the discharge of such lien to the Mortgagee;
- (d) Complete within a reasonable time any Improvements now or at any time in the process of erection upon the Premises;
- (e) Comply with all requirements of law, municipal ordinances or restrictions and covenants of record with respect to the Premises and the use thereof;
- ~~(f) Make no material alterations in the Premises, except as required by law or municipal ordinance;~~
- (g) Suffer or permit no change in the use or general nature of the occupancy of the Premises, without the Mortgagee's prior written consent;
- (h) Pay when due all operating costs of the Premises;
- (i) Initiate or acquiesce in no zoning reclassification with respect to the Premises, without the Mortgagee's prior written consent;
- (j) Provide, improve, grade, surface and thereafter maintain, clean, repair, mark, stripe, police and adequately light parking areas within the Premises of sufficient size to accommodate not less than the number of standard-size American-made automobiles, ~~as~~ as may be required by law, ordinance or regulation (whichever may be greater), together with any sidewalks, aisles, streets, driveways and sidewalk cuts and sufficient paved areas for ingress, egress and right-of-way to and from the adjacent public thoroughfares necessary or desirable for the use thereof;
- (k) Reserve and use all such parking areas solely and exclusively for the purpose of providing ingress, egress and parking facilities for automobiles and other passenger vehicles of Mortgagor and tenants of the Premises and their invitees and licensees;
- (l) Not reduce, build upon, obstruct, redesignate or relocate any such parking areas, sidewalks, aisles, streets, driveways, sidewalk cuts or paved areas or rights-of-way, or lease or grant any rights to use the same to any other person except tenants and invitees of tenants of the Premises, without the prior written consent of the Mortgagee;
- (m) Cause the Premises at all times to be operated in compliance with all federal, state, local and municipal environmental, health and safety laws, statutes, ordinances, rules and regulations (herein called "Environmental Regulations"), so that no cleanup, claim or other obligation or responsibility arises from a violation of any such laws, statutes, ordinances, rules and regulations;
- ~~(n) From time to time at the direction of Mortgagee,~~ Obtain and furnish to Mortgagee at Mortgagor's expense, an environmental audit or survey from an expert satisfactory to Mortgagee with respect to the Premises; and

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- (o) Comply and cause the Premises to comply with all requirements and recommendations relating to compliance with Environmental Regulations and comply and cause the Premises to comply with the recommendations set forth in any environmental audit or survey with respect to the Premises, whether made or obtained by or at the request or direction of Mortgagee, Mortgagor or any federal, state or local governmental authority or agency, or otherwise.

3. **Taxes.** The Mortgagor will pay when due and 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 herein generally called "Taxes"), whether or not assessed against the Mortgagor, if applicable to the Premises or any interest therein, or the Indebtedness Hereby Secured, or any obligation or agreement secured hereby; and Mortgagor will, upon written request, furnish to the Mortgagee duplicate receipts therefor; provided that (a) in the event that any law or court decree has the effect of deducting from the value of land for the purposes of taxation any lien thereon, or imposing upon the Mortgagee the payment in whole or any part of the Taxes or liens herein required to be paid by Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or the interest of the Mortgagee in the Premises or the manner of collection of Taxes, so as to affect this Mortgage or the Indebtedness Hereby Secured or the Holder thereof, then, and in any such event, the Mortgagor, upon demand by the Mortgagee, will pay such Taxes, or reimburse the Mortgagee therefor; and (b) nothing in this Section 3 contained shall require the Mortgagor to pay any income, franchise or excise tax imposed upon the Mortgagee, excepting only such which may be levied against such income expressly as and for a specific substitute for Taxes on the Premises, and then only in an amount computed as if the Mortgagee derived no income from any source other than its interest hereunder.

4. **Insurance Coverage.** The Mortgagor will insure and keep insured the Premises and each and every part and parcel thereof against such perils and hazards ~~as the Mortgagee may from time to time require, and in any event including~~ and in such amounts as the Prior Mortgagee (hereinafter defined) may require and shall name Mortgagee as an additional insured on each policy of such insurance.

- ~~(a) Insurance against loss to the Improvements and Personal Property caused by fire, lightning and risks covered by the so-called "Extended Coverage" endorsement together with "vandalism and malicious mischief" and "sprinkler leakage" endorsements, or by the so-called "all perils" endorsement and such other risks as the Mortgagee may reasonably require, in amounts (but in no event less than the initial stated principal amount of the Note) equal to the full replacement value of the Improvements and Personal Property, plus the cost of debris removal, with full replacement cost endorsement, "agreed amount" endorsement, and "contingent liability from operations of building laws" endorsement;~~
- (b) Comprehensive general public liability insurance against bodily injury and property damage in any way arising in connection with the Premises with such limits as the Mortgagee may reasonably require and in any event not less than \$3,000,000 single limit coverage;
- (c) Rent and rental value insurance (or, at the discretion of Mortgagee, business interruption insurance) in amounts sufficient to pay during any period of up to one (1) year in which the Improvements may be damaged or destroyed (i) all projected annual rents derived from the Premises, and (ii) all amounts (including, but not limited to, all taxes, assessments, utility charges, operating expenses and insurance premiums) required herein to be paid by the Mortgagor or by tenants of the Premises;
- (d) Broad form boiler and machinery insurance on all equipment and objects customarily covered by such insurance (if any thereof are located at the Premises), providing for full repair and replacement cost coverage, and other insurance of the type and in amounts as the Mortgagee may reasonably require, but in any event not less than that customarily carried by persons owning or operating like properties;
- (e) During the making of any alterations or improvements to the Premises (i) insurance covering claims based on the owner's contingent liability not covered by the insurance provided in subsection (b) above, and (ii) Workmen's Compensation insurance covering all persons engaged in making such alterations or improvements;

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- ~~(f) Federal Flood Insurance in the maximum available amount up to the amount of the indebtedness hereby Secured evidenced by the Note, if the Premises is in a "flood plain area" as defined by the Federal Insurance Administration pursuant to the Federal Flood Disaster Protection Act of 1973, as amended;~~
- (g) If any part of the Premises is now or hereafter used for the sale or dispensing of Beer, wine, spirits or any other alcoholic beverages, so-called "drum shop" or "inkeeper's liability" insurance against claims or liability arising directly or indirectly to persons or property on account of such sale or dispensing of beer, wine, spirits or other alcoholic beverages, including in such coverage loss of means of support, all in amounts as may be required by law or as the Mortgagee may specify, but in no event less than \$3,000,000 single limit coverage;
- (h) Earthquake insurance, in an amount equal to the full replacement cost of the Premises plus the cost of debris removal, with full replacement cost endorsement, "agreed amount" endorsement, and "contingent liability from operations of building laws" endorsement but only if obtainable at reasonable cost;
- (i) Such other insurance of the types and in amounts as the Mortgagee may require, but in any event not less than the types and coverages of insurance customarily carried by persons owning and operating like properties;

and Mortgagor shall at its own expense furnish such insurance appraisals as may be required by Mortgagee from time to time (and in any event not less often than once every 5 years) to ascertain the full replacement cost of the improvements for the purposes of Subsection (a) above.

## 5. Insurance Policies. All policies of insurance to be maintained and provided as required by Section 4 hereof shall:

- (a) Be in forms, companies and amounts reasonably satisfactory to Mortgagee, and all policies of casualty insurance shall have attached thereto mortgagee clauses or endorsements in favor of and with loss payable to Mortgagee;
- (b) Contain endorsements that no act or negligence of the insured or any occupant and no occupancy or use of the Premises for purposes more hazardous than permitted by the terms of the policies will affect the validity or enforceability of such policies as against Mortgagee;
- (c) Be written in amounts sufficient to prevent Mortgagor from becoming a co-insurer;
- (d) Provide for thirty (30) days' prior written notice of cancellation to Mortgagee;
- ~~(e) Contain no deductible amount in excess of \$5,000;~~
- (f) Provide that any waiver of the insured's subrogation right shall not void coverage;

and Mortgagor will deliver all policies, including additional and renewal policies, to Mortgagee, and in case of insurance policies about to expire, the Mortgagor will deliver renewal policies not less than thirty (30) days prior to the respective dates of expiration.

## 6. Deposits for Taxes and Insurance Premiums. In order to assure the payment of Taxes and insurance premiums payable with respect to the Premises as and when the same shall become due and payable:

- (a) The Mortgagor shall deposit with the Mortgagee on the first day of each and every month, commencing with the date the first payment of interest and/or principal and interest shall become due on the indebtedness hereby Secured, an amount equal to:

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- (i) ~~One-Twelfth (1/12) of the Taxes next to become due upon the Premises, provided that in the case of the first such deposit, there shall be deposited in addition, an amount as estimated by Mortgagee which, when added to monthly deposits to be made thereafter as provided for herein, shall assure to Mortgagee's satisfaction that there will be sufficient funds on deposit to pay Taxes as they come due, plus~~
- (ii) One-Twelfth (1/12) of the annual premiums on each policy of insurance upon the Premises; provided that, with the first such deposit there shall be deposited in addition, an amount equal to one-twelfth (1/12) of such annual insurance premiums multiplied by the number of months elapsed between the date premiums on each policy were last paid to and including the date of deposit.

provided that the amount of such deposits (herein generally called "Tax and Insurance Deposits") shall be based upon Mortgagee's reasonable estimate as to the amount of Taxes and premiums of insurance next to be payable:

- (b) The aggregate of the monthly Tax and Insurance Deposits, together with monthly payments of interest and/or principal and interest payable on the Note, shall be paid in a single payment each month, to be applied to the following items in the order stated:
- (i) Taxes and insurance premiums;
  - (ii) Indebtedness Hereby Secured other than principal and interest on the Note;
  - (iii) Interest on the Note;
  - (iv) Amortization of the principal balance of the Note.
- (c) The Mortgagee will, out of the Tax and Insurance Deposits, upon the presentation to the Mortgagee by the Mortgagor of the bills therefor, pay the insurance premiums and Taxes or will, upon presentation of receipted bills therefor, reimburse the Mortgagor for such payments made by the Mortgagor; provided that (i) if the total Tax and Insurance Deposits on hand shall not be sufficient to pay all of the Taxes and insurance premiums when the same shall become due, then the Mortgagor shall pay to the Mortgagee on demand any amount necessary to make up the deficiency, and (ii) if the total of such Deposits exceed the amount required to pay the Taxes and insurance premiums, such excess shall be credited on subsequent payments to be made for such items;
- (d) In the event of a default in any of the provisions contained in this Mortgage, in the Note or in other Loan Documents, the Mortgagee, at its option, without being required to do so, may apply any Tax and Insurance Deposits on hand on any of the Indebtedness Hereby Secured, in such order and manner as the Mortgagee may elect, and in such case the Mortgagor will replenish any Tax and Insurance Deposits so applied within 5 days after Mortgagee's demand; provided that when the Indebtedness Hereby Secured has been fully paid, then any remaining Tax and Insurance Deposits shall be paid to the Mortgagor;
- (e) All Tax and Insurance Deposits are hereby pledged as additional security for the Indebtedness Hereby Secured, and shall be held in trust to be irrevocably applied for the purposes for which made as herein provided, and shall not be subject to the direction or control of the Mortgagor;
- (f) Notwithstanding anything to the contrary herein contained, the Mortgagee shall not be liable for any failure to apply to the payment of Taxes and insurance premiums any amounts deposited as Tax and Insurance Deposits unless the Mortgagor, while no default exists hereunder, and within a reasonable time prior to the due date, shall have requested the Mortgagee in writing to make application of such Deposits on hand to the payment of the particular Taxes or insurance premiums for the payment of which such Deposits were made, accompanied by the bills therefor;
- (g) All Tax and Insurance Deposits in the hands of Mortgagee shall be held without allowance of interest and need not be kept separate and apart but may be commingled with any funds of the Mortgagee until applied in accordance with the provisions hereof.

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7. Proceeds of Insurance. The Mortgagor will give the Mortgagee prompt notice of any damage to or destruction of the Premises, and subject to the rights and interests of any Prior Mortgagee, as hereinafter defined:

(a) In case of loss covered by policies of insurance, the Mortgagee (or, after entry of Decree of foreclosure, the purchaser at the foreclosure sale or decree creditor, as the case may be) is hereby authorized at its option either (i) to settle and adjust any claim under such policies without the consent of the Mortgagor, or (ii) allow the Mortgagor to agree with the insurance company or companies on the amount to be paid upon the loss; provided that the Mortgagor may itself adjust losses aggregating not in excess of Twenty-Five Thousand Dollars (\$25,000); provided further that in any case the Mortgagee shall, and is hereby authorized to, collect and receipt for any such insurance proceeds; and the expenses incurred by the Mortgagee in the adjustment and collection of insurance proceeds shall be so much additional Indebtedness Hereby Secured, and shall be reimbursed to the Mortgagee upon demand;

(b) In the event of any insured damage to or destruction of the Premises or any part thereof (herein called an "Insured Casualty") and if, in the reasonable judgment of the Mortgagee, the Premises can be restored prior to Loan maturity, to an architectural and economic unit of the same character and not less valuable than the same was prior to the Insured Casualty, and adequately securing the outstanding balance of the Indebtedness Hereby Secured, and the insurers do not deny liability to the insureds, then, if none of the Events are subject to termination on account of such casualty and if no Event of Default, as hereinafter defined, shall have occurred and be then continuing, and if there was no Event of Default, whether continuing or not, at the time of occurrence of damage or destruction, which resulted in said loss, the proceeds of insurance shall be applied to reimburse the Mortgagor for the cost of restoring, repairing, replacing or rebuilding (herein generally called "Restoring") the Premises or any part thereof subject to Insured Casualty, as provided for in Section 9 hereof;

the Prior Mortgagee permits restoration

(c) Notwithstanding the foregoing, proceeds of rent and rental value insurance or business interruption insurance provided as set forth in section 4(c) hereof collected by the Mortgagee, shall be held and applied as follows:

(i) So long as no Event of Default shall have occurred, such proceeds shall be applied in payment of periodic installments of principal and interest provided for in the Note and to payment of any Tax and Insurance Deposits required by Section 6 hereof, and any surplus shall be remitted to Mortgagor; and

(ii) Upon the occurrence of an Event of Default, such proceeds shall be applied as set forth in Subsection (c) below.

(d) If, in the reasonable judgment of Mortgagee, the Premises cannot be restored to an architectural and economic unit as provided for in Subsection (b) above, then at any time from and after the Insured Casualty, upon thirty (30) days' written notice to Mortgagor, Mortgagee may declare the entire balance of the Indebtedness Hereby Secured to be, and at the expiration of such thirty (30) day period the Indebtedness Hereby Secured shall be and become, immediately due and payable;

(e) Except as provided for in this Section 7, Mortgagee shall apply the proceeds of insurance (including amounts not required for Restoring effected in accordance with Subsection (b) above) consequent upon any Insured Casualty upon the Indebtedness Hereby Secured, in such order or manner as the Mortgagee may elect; provided that no premium or penalty shall be payable in connection with any prepayment of the Indebtedness Hereby Secured made out of insurance proceeds as aforesaid;

(f) In the event that proceeds of insurance, if any, shall be made available to the Mortgagor for the Restoring of the Premises, Mortgagor hereby covenants to Restore the same to be of at least equal value and of substantially the same character as prior to such damage or destruction; all to be effected in accordance with plans and specifications to be first submitted to and approved by the Mortgagee;

(g) Any portion of insurance proceeds remaining after payment in full of the Indebtedness Hereby Secured shall be paid to Mortgagor or as ordered by a court of competent jurisdiction;

(h) No interest shall be payable by Mortgagee on account of any insurance proceeds at any time held by Mortgagor;



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- (i) Nothing contained in this Mortgage shall create any responsibility or liability upon the Mortgagee to (i) collect any proceeds of any policies of insurance, or (ii) Restore any portion of the Premises damaged, or destroyed through any cause.

**8. Condemnation.** The Mortgagor will give Mortgagee prompt notice of any proceedings, instituted or threatened, seeking condemnation or taking by eminent domain or any like process (herein generally called a "Taking"), of all or any part of the Premises, including damages to grade, and subject to the rights and interests of any Prior Mortgagee:

- (a) Mortgagor hereby assigns, transfers and sets over unto Mortgagee the entire proceeds of any Award consequent upon any Taking;
- (b) If in the reasonable judgment of the Mortgagee, the Premises can be restored to an architectural and economic unit of the same character and not less valuable than the Premises prior to such Taking and adequately securing the outstanding balance of the Indebtedness Hereby Secured, then if no Event of Default, as hereinafter defined, shall have occurred and be then continuing, the Award shall be applied to reimburse Mortgagor for the cost of Restoring the portion of the Premises remaining after such Taking, as provided for in Section 9 hereof;
- (c) If in the reasonable judgment of Mortgagee, the Premises cannot be restored to an architectural and economic unit as provided for in Subsection (b) above, then at any time from and after the Taking, upon thirty (30) days' written notice to Mortgagor, Mortgagee may declare the entire balance of the Indebtedness Hereby Secured to be, and at the expiration of such thirty (30) day period the Indebtedness Hereby Secured shall be and become, immediately due and payable;
- (d) Except as provided for in Subsection (b) of this Section 8, Mortgagee shall apply any Award (including the amount not required for Restoration elected in accordance with Subsection (b) above) upon the Indebtedness Hereby Secured in such order or manner as the Mortgagee may elect; provided that no premium or penalty shall be payable in connection with any prepayment of the Indebtedness Hereby Secured made out of any Award as aforesaid;
- (e) In the event that any Award shall be made available to the Mortgagor for Restoring the portion of the Premises remaining after a Taking, Mortgagor hereby covenants to Restore the remaining portion of the Premises to be of at least equal value and of substantially the same character as prior to such Taking, all to be effected in accordance with plans and specifications to be first submitted to and approved by the Mortgagee;
- (f) Any portion of any Award remaining after payment in full of the Indebtedness Hereby Secured shall be paid to Mortgagor or as ordered by a court of competent jurisdiction;
- (g) No interest shall be payable by Mortgagee on account of any Award at any time held by Mortgagee.

**9. Disbursement of Insurance Proceeds and Condemnation Awards.** In the event the Mortgagor is entitled to reimbursement out of insurance proceeds or any Award held by the Mortgagee, such proceeds shall be disbursed from time to time upon the Mortgagee being furnished with satisfactory evidence of the estimated cost of completion of the Restoring, with funds (or assurances satisfactory to the Mortgagee that such funds are available) sufficient in addition to the proceeds of insurance or Award, to complete the proposed Restoring, and with such architect's certificates, waivers of lien, contractor's sworn statements and such other evidence of costs and payments as the Mortgagee may reasonably require and approve; and the Mortgagee may, in any event, require that all plans and specifications for such Restoring be submitted to and approved by the Mortgagee prior to commencement of work, and in each case:

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- (a) No payment made prior to the final completion of the Restoring shall exceed ninety percent (90%) of the value of the work performed from time to time;
- (b) Funds other than proceeds of insurance or the Award shall be disbursed prior to disbursement of such proceeds or Award; and
- (c) At all times the undisbursed balance of such proceeds or Award remaining in the hands of the Mortgagee, together with funds deposited for the purpose or irrevocably committed to the satisfaction of the Mortgagee by or on behalf of the Mortgagor for the purpose, shall be at least sufficient in the reasonable judgment of the Mortgagee to pay for the cost of completion of the Restoring, free and clear of all liens or claims for lien.

10. **Stamp Tax.** If, by the laws of the United States of America, or of any state having jurisdiction over the Mortgagor, any tax is due or becomes due in respect of the issuance of the Note, the Mortgagor shall pay such tax in the manner required by such law.

11. **Prepayment Privilege.** ~~At such time as the Mortgagor is not in default under the terms of the Note, or under the terms of this Mortgage.~~ The Mortgagor shall have the privilege of making prepayments on the principal of the Note (in addition to the required payments thereunder) in accordance with the terms and conditions, if any, set forth in the Note, but not otherwise.

12. **Effect of Extensions of Time, Amendments on Junior Liens and Others.** Mortgagor covenants and agrees that:

- (a) If the payment of the Indebtedness Hereby Secured, or any part thereof, be extended or varied, or if any part of the security 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, if any, and the lien and all provisions hereof shall continue in full force and effect; the right of recourse against all such persons being expressly reserved by the Mortgagee, notwithstanding any such extension, variation or release;
- (b) Any person, firm or corporation taking a junior mortgage or other lien upon the Premises or any interest therein, shall take such lien, subject to the rights of the Mortgagee to amend, modify and supplement this Mortgage, the Note, the Assignment and the Construction Loan Agreement hereinafter referred to, and to vary the rate of interest and the method of computing the same, and to impose additional fees and other charges, and to extend the maturity of the Indebtedness Hereby Secured, in each and every case without giving notice to, or 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;
- (c) Nothing in this Section contained shall be construed as waiving any provision of Section 17 hereof which provides, among other things, that it shall constitute an Event of Default if the Premises be sold, conveyed or encumbered.

13. **Effect of Changes in Tax Laws.** In the event of the enactment after the date hereof by any legislative authority having jurisdiction of the Premises of any law deducting from the value of land for the purposes of taxation, any lien thereon, or imposing upon the Mortgagee the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by the Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or the Mortgagee's interest in the Premises, or the method of collecting taxes, so as to affect this Mortgage or the Indebtedness Hereby Secured, or the holder thereof, then, and in any such event, the Mortgagor, upon demand by the Mortgagee, shall pay such taxes or assessments, or reimburse the Mortgagee therefor; provided that if in the opinion of counsel for the Mortgagee the payment by Mortgagor of any such taxes or assessments shall be unlawful, then the Mortgagee may, by notice to the Mortgagor, declare the entire principal balance of the Indebtedness Hereby Secured and all accrued interest to be due and payable on a date specified in such notice, not less than 180 days after the date of such notice, and the Indebtedness Hereby Secured and all accrued interest shall then be due and payable without premium or penalty on the date so specified in such notice.

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16. Financial Statements. The Mortgagor will, within ninety (90) days after the end of each fiscal year of the Mortgagor and of each guarantor and each tenant specified by Mortgages, furnish to the Mortgages at the place where interest thereon is then payable, financial and operating statements of the Premises and of each guarantor and each such tenant for such fiscal year, all in reasonable detail and in any event including such itemized statement of receipts and disbursements as shall enable Mortgages to determine whether any default exists hereunder or under the Note; and in connection therewith:

(a) Such financial and operating statements shall be prepared and certified at the expense of Mortgagor in such manner as may be acceptable to the Mortgages, and the Mortgages may, by notice in writing to the Mortgagor, require that the same be prepared and certified, pursuant to audit, by a firm of independent certified public accountants satisfactory to Mortgages, in which case such accountants shall state whether or not, in their opinion, any default or event of default exists hereunder or under the Note; and

15. Inspection of Premises. The Mortgages shall have the right to inspect the Premises at all reasonable times, and access thereto shall be permitted for that purpose.

provide Mortgage with copies of any financial statements of Mortgagor from time to time furnished by Mortgages to the prior Mortgage.

(c) The Mortgages, in making any statement hereby authorized (i) relating to taxes and assessments, may do so according to any bill, statement or estimate, without inquiry into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof, (ii) for the purchase, discharge, compromise or settlement of any other lien or claim, may do so without inquiry as to the validity or amount of any claim for lien which may be asserted, or (iii) in connection with the completion of construction, furnishing or equipping of the Premises or the rental operation or management of the Premises or the payment of operating costs and expenses thereof, Mortgage may do so in such amounts and to such persons as Mortgage may deem appropriate, and may enter into such contracts herefor as Mortgage may deem appropriate or may perform the same itself.

(d) Inaction of the Mortgage shall never be considered a waiver of any right accruing to it on account of any default on the part of the Mortgagor.

(e) All monies paid for any of the purposes herein authorized or authorized by any other instrument evidencing or securing the Indebtedness Hereby Secured, and all expenses paid or incurred in connection therewith, including attorney's fees and any other monies advanced by the Mortgages to protect the Premises and the Premises and such improvements, or to complete construction, furnishing and equipping, or to rent, operate and manage the Premises and such improvements, or to pay any such operating costs and expenses thereof, or to keep the Premises, improvements and Personal Property operational and usable for their intended purposes, shall be so paid, additional Indebtedness Hereby Secured, whether or not they exceed the amount of the Note, and shall become immediately due and payable without notice, and with interest thereon at the Default Rate specified in the Note (herein called the "Default Rate").

(b) Mortgagee may, but shall not be required to, complete construction, furnishing and equipping of the improvements upon the Premises and rent, operate and manage the Premises and such improvements and pay operating costs and expenses, including management fees, of every kind and nature in connection therewith, so that the Premises, improvements and Personal Property shall be operational and usable for their intended purposes:

(a) The 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, title or claim thereof, or redeem from any tax sale or forfeiture affecting the Premises, or contest any tax, assessment, lien or claim:

14. Mortgagor's Performance of Mortgagor's Obligations. In case of default therein the Mortgages, 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 or in any other Loan Documents, notwithstanding that the Mortgages are not required to, make any payment or perform any act herein or in any manner deemed expedient to the Mortgages; and in connection therewith:

after written notice to Mortgagor

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SECTION 17

in each case whether any such conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest, encumbrance or alienation is effected directly, indirectly, voluntarily or involuntarily, by operation of law or otherwise; provided that provisions of this Section 17 shall be operative with respect to, and shall be binding upon, any persons who, in accordance with the terms hereof or otherwise, shall acquire any part of or interest in or encumbrance upon the Premises or such beneficial interest in, share of stock of or partnership or joint venture interest in the Mortgagee or any beneficiary of a Trustee Mortgage; and provided further that no contract by Mortgagee to, or any waiver of, any event or condition which would otherwise constitute an Event of Default under this Section 17, shall constitute a consent to or a waiver of any other or subsequent such event or condition or a waiver of any right, remedy or power of Mortgagee consequent thereon.

(c) If there shall be any change in control (by way of transfers of stock ownership, partnership interest or otherwise) in any general partner which directly or indirectly controls or is a general partner of a partnership or joint venture beneficiary as described in Subsection 17(d) above:

(d) If the Mortgagee is a partnership or joint venture, or if any beneficiary of a Trustee Mortgage is a partnership or joint venture, then if any general partner or joint venture partner in such partnership or joint venture shall create, effect or consent to or shall suffer or permit any sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation of any part of the partnership interest or joint venture interest, as the case may be, of such partner or joint venture:

(e) If the Mortgagee is a corporation, or if any beneficiary of a Trustee Mortgage is a corporation, then if any shareholder of such corporation shall create, effect, consent to or consent to or shall suffer or permit any sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation of any such shareholder's share in such corporation, provided that if such corporation is a corporation whose stock is publicly traded on a national securities exchange or on the Over-the-Counter market, then this Section 17(c) shall be inapplicable.

(f) If the Mortgagee is a Trustee, then if any beneficiary of the Mortgagee shall create, effect, consent to, or consent to or shall suffer or permit, any sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation of such beneficiary's beneficial interest in the Mortgagee:

(g) If the Mortgagee shall create, effect, consent to or consent to or shall suffer or permit any sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation of the Premises or any part thereof, or interest therein, excepting only sales or other dispositions of Collateral as defined in Section 19 (herein called "Obsolete Collateral") no longer useful in connection with the operation of the Premises; provided that prior to the sale or other disposition thereof, such Obsolete Collateral shall have been replaced by Collateral, subject to the first and prior lien hereof, of at least equal value and utility:

17. Restrictions on Transfer. Subject to the provisions of Section 18 hereof, it shall be an immediate Event of Default hereunder if, without the prior written consent of the Mortgagee, any of the following shall occur, and in any event Mortgagee may condition its consent upon such increase in rate of interest payable upon the indebtedness hereby Secured, change in monthly payments thereon, change in maturity thereof and/or the payment of a fee, all as Mortgagee may in its sole discretion require:

(h) If the statements furnished shall not be prepared in accordance with generally accepted accounting principles consistently applied, or if Mortgagee fails to furnish the same when such statements may audit or cause to be audited the books of the Premises and/or the Mortgagee and of each Guarantor and each such tenant, as Mortgagee's expense, and the cost of such audit shall be so much additional indebtedness hereby secured bearing interest at the Default Rate until paid and payable upon demand.

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remains of the Premises:

- (b) The Collateral is to be used by the Mortgagor solely for business purposes, being installed upon the Premises for Mortgagor's own use or as the equipment and furnishings furnished by Mortgagor, as landlord, to
- (a) The Mortgagor (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 the lien hereof and the prior mortgage:

19. Uniform Commercial Code. This Mortgage constitutes a Security Agreement under the Uniform Commercial Code of the State in which the Premises is located (herein called 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 herein 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 and the following provisions of this Section 19 shall not limit the generality or applicability of any other provision of this Mortgage, but shall be in addition thereto:

- (a) Liens securing the Indebtedness Hereby Secured:
- (b) The lien of current real estate taxes and assessments not in default:
- (c) Transfers of the Premises, or part thereof, or interest therein or any beneficial interest, shares of stock or partnership or joint venture interest, as the case may be, in the Mortgagor, or any beneficiary of a Trustee Mortgage or on behalf of an owner thereof who is deceased or departed judicially incompetent, to such owner's heirs, legatees, devisees, executors, administrators, estate, personal representatives and/or committee.
- (d) Encumbrance of the Premises and/or of the beneficial interest in the Mortgagor as permitted pursuant to the terms of the Loan Agreement; and
- (e) Leases of the Premises or portions thereof.

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- (c) The Collateral will be kept at the Real Estate and will not be removed therefrom without the consent of the Mortgagee being the Secured Party as that term is used in the Code) by Mortgagee or any other person; and the Collateral may be added to the Real Estate but will not be added to any other real estate.
- (d) The only persons having any interest in the Premises are the Mortgagee, Mortgagee and persons occupying the Premises as tenants only.
- (e) No Financing Statement covering any of the Collateral or any proceeds thereof is on file in any public office except pursuant hereto; and Mortgagee will at its own cost and expense, upon demand, furnish to the Mortgagee such further information and will execute and deliver to the Mortgagee such financing statement and other documents in form satisfactory to the Mortgagee, and will do all such acts and things as the Mortgagee may at any time or from time to time reasonably request or as may be necessary or appropriate to establish and maintain a perfected security interest in the Collateral as security for the indebtedness hereby Secured, subject to no adverse liens or encumbrances; and the Mortgagee 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, whenever filing or recording is deemed by the Mortgagee to be necessary or desirable.
- (f) Upon the occurrence of any Event of Default hereunder (regardless of whether the Code has been enacted in the jurisdiction where rights or remedies are asserted) and at any time thereafter (such Event of Default having previously been cured), the Mortgagee at its option may declare the indebtedness hereby Secured immediately due and payable, all as more fully set forth in Section 20 hereof, and thereupon Mortgagee shall have the remedies of a secured party under the Code, including without limitation: the right to take immediate and exclusive possession of the Collateral, or any part thereof, and for that purpose may, so far as the Mortgagee can give authority herefor, with or without judicial process, enter (if this can be done without breach of the peace) upon any place which the Collateral or any part thereof may be situated and remove the same therefrom (provided that if the Collateral is added to real estate, such removal shall be subject to the conditions stated in the Code).
- (g) The Mortgagee shall be entitled to hold, maintain, preserve and prepare the Collateral for sale, until disposed of, or may propose to retain the Collateral, subject to the Mortgagee's right of redemption, if any, in satisfaction of the Mortgagee's obligations as provided in the Code; provided that (i) the Mortgagee without removal may tender the Collateral to the Mortgagee and dispose of the Collateral on the Premises, and (ii) the Mortgagee may require the Mortgagee to assemble the Collateral and make it available to the Mortgagee for its possession at a place to be designated by Mortgagee which is reasonably convenient to both parties.
- (h) The Mortgagee will give Mortgagee at least five (5) days' notice of the time and place of any public sale thereof or of the time after which any private sale or any other intended disposition thereof is made and the requirements of reasonable notice shall be met if such notice is mailed, by certified mail or equivalent, postage prepaid, to the address of the Mortgagee determined as provided in Section 42 hereof, at least five (5) days before the time of the sale or disposition.
- (i) The Mortgagee may buy at any public sale, and if the Collateral is a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations, Mortgagee may buy at any private sale, and any such 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.
- (j) The net proceeds realized upon any such disposition, after deduction for the expenses of retaining, holding, preparing for sale, selling or the like, and the reasonable attorneys' fees and legal expenses incurred by Mortgagee, shall be applied in satisfaction of the indebtedness hereby Secured; and the Mortgagee will account to the Mortgagee for any surplus realized on such disposition.
- (k) 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 the Mortgagee, including the Collateral deemed part of the realty upon any foreclosure thereof, so long as any part of the indebtedness hereby Secured remains unpaid.
- (l) The terms and provisions contained in this Section 19 shall, unless the context otherwise requires, have the meanings and be construed as provided in the Code.

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20. Events of Default. If one or more of the following events (herein called "Events of Default") shall occur:
- (a) If default is 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 is made in the making of any payment of any other monies required to be made hereunder or under the Note, and any applicable period of grace specified in the Note shall have elapsed; or
  - (b) If an Event of Default pursuant to Section 17 hereof shall occur and be continuing without notice or grace of any kind; or
  - (c) If default is made in the maintenance and delivery to Mortgagee of insurance required to be maintained and delivered hereunder, without notice or grace of any kind; or
  - (d) If (and for the purpose of this Section 20(d) only, the term Mortgagee shall mean and include not only Mortgagee but any beneficiary of a Trustee Mortgagee and each person who, as guarantor, co-maker or otherwise shall be or become liable for or obligated upon all or any part of the Indebtedness Hereby Secured or any of the covenants or agreements contained herein ~~or in the Government Loan Agreement~~);
  - (e) The Mortgagee shall file a petition in voluntary bankruptcy under the Bankruptcy Code of the United States or any similar law, state or federal, now or hereafter in effect; or
  - (f) The Mortgagee shall file an answer admitting insolvency or inability to pay its debts, or within sixty (60) days after the filing against Mortgagee of any involuntary proceedings under such Bankruptcy Code or similar law, such proceedings shall not have been vacated or stayed; or
  - (g) The Mortgagee shall be adjudicated a bankrupt, or a trustee or receiver shall be appointed for the Mortgagee, or for all or the major part of the Mortgagee's property or the Premises, in any involuntary proceeding, or any court shall have taken jurisdiction of all or the major part of the Mortgagee's property or the Premises in any involuntary liquidation or winding up of the Mortgagee, and such trustee or receiver shall not be discharged or such jurisdiction renounced or vacated or stayed on appeal or otherwise stayed within sixty (60) days; or
  - (h) The Mortgagee shall make no 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 or trustee or liquidator of all or the major part of its property, or the Premises; or
  - (i) If any default shall exist under the provisions of Section 16 hereof, or under the assignment referred to therein; or
  - (j) If any default shall exist under the provisions of Section 17 hereof, or under the Government Loan Agreement referred to therein; or
  - (k) If any representation made by or on behalf of Mortgagee in connection with the Indebtedness Hereby Secured shall prove untrue in any material respect; or
  - (l) ~~In the Loan Agreement~~
  - (m) If default shall continue for 30 days after notice thereof by Mortgagee to Mortgagee in the due and punctual performance or observance of any other agreement or condition hereof, or in the Note contained, provided that if such default is not susceptible of cure within such 30-day period, such 30-day period shall be extended to the extent necessary to permit such cure if, but only if, (i) Mortgagee shall commence such cure within such 30-day period and shall thereafter prosecute such cure to completion, diligently and without delay; and (ii) no other Event of Default shall occur; or
  - (n) If the Premises shall be abandoned;

(m) The deficiency in case of a sale and deficiency.

(i) The Indebtedness Hereby Secured or the indebtedness secured by any decree foreclosing this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or such decree, provided such application is made prior to the foreclosure sale; or

(j) The court may, from time to time, authorize the receiver to apply the net income from the Premises in his hands in payment in whole or in part of:

(k) The court may, from time to time, authorize the receiver to apply the net income from the Premises in his hands in payment in whole or in part of: or are usual in such cases for the protection, possession, control, management and operation of the Premises of such receiver, would be entitled to collection of such Rents and all other powers which may be necessary to a redemption or not, as well as during any further times when the Mortgage, except for the intervention in case of a sale and a deficiency, during the full statutory period of redemption, if any, whether there Such receiver shall have the power to collect the Rents during the pendency of such foreclosure suit and Mortgage hereunder, or any holder of the Note, may be appointed as such receiver;

(l) Such appointment may be made either before or after sale, without order, without regard to solvency or insolvency of the Mortgagee at the time of application for such receiver, and without regard to the value of the Premises or whether the same shall be then occupied as a homestead or not; and the Mortgage hereunder, or any holder of the Note, may be appointed as such receiver;

(m) 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;

23. Receiver. Mortgagee consents and agrees that:

22. 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 Section 21 hereof; Second, all other items which under the terms hereof constitute Indebtedness Hereby Secured additional to that evidenced by the Note, with interest on such items as herein provided; Third, to interest in amount unpaid upon the Note; Fourth, to the principal remaining unpaid upon the Note; and finally, any overplus to the Mortgagee, and its successors or assigns, as then rights may appear.

(a) All expenditures and expenses of the nature in this Section mentioned, and such 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 an attorney employed by the Mortgagee in any litigation or proceedings affecting this Mortgage, the Note or the Premises or the rights of Mortgagee hereunder or as to which Mortgagee may be made a party by virtue of its interest in the Premises pursuant to this Mortgage or otherwise, including probable and bankruptcy proceedings, or in preparation for the commencement or defense of any proceeding or threatened suit or proceeding, shall constitute so much additional Indebtedness Hereby Secured, and shall be immediately due and payable by the Mortgagee, with interest thereon at the Default Rate.

(b) In any suit or proceeding to foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the decree for sale, all expenditures and expenses which may be paid or incurred by or on behalf of the Mortgagee for attorneys' fees, appraisers' fees, outlays for documentary and expert evidence, stenographers' 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 assurances with respect to title, as the Mortgagee may deem reasonably 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; and

21. Foreclosure. When the Indebtedness Hereby Secured, or any part thereof, shall become due, whether by acceleration or otherwise, the Mortgagee shall have the right to foreclose the lien hereof for such indebtedness or part thereof and:

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

SECTION 10



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~~26. The Mortgagee agrees that it will duly perform and observe all of the terms and provisions on its part to be performed and observed under any and all Leases to the end that no default on the part of~~

(b) The Mortgagee agrees that it will duly perform and observe all of the terms and provisions on its part to be performed and observed under the Assignment:

(a) The Mortgagee agrees that it will duly perform and observe all of the terms and provisions on its part to be performed and observed under the Assignment:

and with the same effect as if set forth herein at length; and in connection with the foregoing: as therein more specifically set forth, which said Assignment is hereby incorporated herein by reference as fully of the rent, issues and profits, and/or any and all Leases and/or the rights of management of the Premises, all as of the date hereof, wherein and whereby, among other things, the Mortgagee has assigned to the Mortgagee all herewith, executed and delivered to the Mortgagee a separate instrument (herein called the "Assignment") dated ~~26. Assignment to further security for the indebtedness hereby secured; the Mortgagee has, concurrently~~

(c) If the Mortgagee is a trustee, Mortgagee represents that the provisions of this Section (including the waiver of redemption rights) were made at the express direction of the Mortgagee's beneficiaries and the persons having the power of direction over Mortgagee, and are made on behalf of the Trust; Estate of Mortgagee and all beneficiaries of Mortgagee, as well as all other persons mentioned above.

(b) The Mortgagee will not invoke or waive any such law or laws or otherwise hinder, delay or impede the execution of any right, power or remedy hereunder or otherwise granted or delegated to the Mortgagee but will suffer and permit the execution of every such right, power and remedy as though no such law or laws had been made or enacted; and

(a) The Mortgagee hereby expressly waives any and all rights of redemption from sale, if any, under any order or decree of foreclosure of this Mortgagee, on its own behalf and on behalf of each and every person, it being the intent hereof that it and all such rights of redemption of the Mortgagee 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, Part 12-124, Part 12-125 and Part 15-1601 of the Uniform Statutes or other applicable law or replacement statutes;

25. ~~Waiver.~~ The Mortgagee hereby covenants and agrees that it will not at any time raise upon or plead, or in any way under whatever claim or take any advantage of, any stay, exemption or extension law or any so-called "Mortgage Law" now or at any time hereafter in force, not claim, take or raise upon the 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 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 a foreclosure sale or other enforcement hereof, and without limiting the foregoing:

(b) In the event of foreclosure sale, the Mortgagee is hereby authorized, without the consent of the Mortgagee, to assign any and all insurance policies to the purchaser at the sale, or to take such other steps as the Mortgagee may deem advisable to cause the interest of such purchaser to be protected by any of the said insurance policies.

(a) In the case of foreclosure of this Mortgagee, the court, in its decree, may provide that the Mortgagee's clause attached to each of the casualty insurance policies may be canceled and that the purchaser at foreclosure sale may cause a new loss clause to be attached to each of said casualty insurance policies making the loss thereunder payable to each of said purchaser and any such foreclosure decree may further provide that in case of a redemption under said decree as provided by statute, such redemption may cause the preceding loss clause attached to each casualty insurance policy to be canceled and a new loss clause to be attached thereto, making the loss thereunder payable to such redemption; and

24. Insurance Upon Foreclosure. In case of an insured loss after foreclosure proceedings have been instituted, the proceeds of any insurance policy or policies, if not applied in restoring the improvements, as aforesaid, shall be used to pay the amount due in accordance with any decree of foreclosure that may be entered in any such proceeding, and the balance, if any, shall be paid as the court may direct; and:

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and issued by a bond or title insuring company, as may be satisfactory to Mortgagee.

(b) Mortgagee shall deposit with Mortgagee the full amount (herein called the "Lien Amount") of such

(a) Mortgagee shall forthwith give notice of any Contested Lien to Mortgagee at the time the same shall be

but only if:

(c) Mortgagee hereby agrees to duly and punctually perform, observe and pay or cause to be duly performed,

(b) This Mortgage secures all funds advanced pursuant to the Construction Loan Agreement (which advances

(a) The Construction Loan Agreement is hereby incorporated herein by this reference as fully and with the

of all or part of the indebtedness hereby secured for the purpose of financing the construction and

beneficiaries of the Mortgage as contemplated by said Section.

29. Borrower as Loan. Mortgagee represents and agrees that the loan evidenced by the Note and secured hereby is

26. Mortgagee in Possession. Nothing herein contained shall be construed as constituting the Mortgagee a

such instrument shall specifically so provide.

27. Priorities With Respect to Lease. If the Mortgagee shall execute and record (or register) in the public office

wherein this Mortgage was recorded (or registered) a unilateral declaration that this Mortgage shall be subject and

subordinate, in whole or in part, to any Lease, then upon such recordation (or registration), this Mortgage shall

become subject and subordinate to such Lease to the extent set forth in such instrument; provided that such

subordination shall not extend to or affect the priority of entitlement to insurance proceeds or any Award unless

32. Indemnification. Mortgagee does hereby covenant and agree that: (a) Mortgagee shall have no responsibility for the control, care, management or repair of the Premises and shall not be responsible or liable for any negligence in the management, operation, upkeep, repair or control of the Premises resulting in fire, injury or death to any tenant, licensee, invitee, stranger or other person. (b) No liability shall be asserted or incurred against Mortgagee in the exercise of the rights and powers hereby granted to the Mortgagee and Mortgagee expressly reserves and releases any such liability. (c) Mortgagee shall and does hereby indemnify, defend and hold Mortgagee harmless from any liability, loss or damage which Mortgagee may or might incur by reason of (i) exercise by Mortgagee of any rights hereunder, and (ii) any and all claims and demands whatsoever which may be asserted against Mortgagee by reason of any violation of, or liability under any Environmental Regulation (other than due solely to an act or omission of Mortgagee after obtaining possession or control of the Premises) or of any alleged obligation or undertaking on Mortgagee's part to perform or discharge any of the terms, covenants or agreements contained herein or in any instrument evidencing, securing or relating to the Indebtedness Hereby Secured or in any contracts, agreements or other instruments relating to or affecting the Premises; any and all such liability, loss or damage incurred by the Mortgagee, together with the costs and expenses, including reasonable attorney's fees incurred by Mortgagee in the defense (including preparation for defense) of any claims or demands therefor (whether successful or not) shall be so much additional Indebtedness Hereby Secured, and the Mortgagee shall reimburse the Mortgagee therefor on demand, together with interest thereon at the Default Rate from the date of demand to the date of payment.

33. Mortgagee Not a Joint Venture or Partner. Mortgagee acknowledges and agrees that in no event shall Mortgagee be deemed to be a partner or joint venturer with Mortgagee or any beneficiary of Mortgagee, and without limiting the foregoing, Mortgagee shall not be deemed to be such a partner or joint venturer on account of its becoming a mortgagee in possession or exercising any rights pursuant to this Mortgage or pursuant to any other instrument or document evidencing or securing any of the Indebtedness Hereby Secured, or otherwise.

34. Subrogation. To the extent that Mortgagee, on or after the date hereof, pays any sum due under or secured by any Senior Lien as hereinafter defined, or Mortgagee or any other person pays any such sum with the proceeds of the Indebtedness Hereby Secured:

(a) Mortgagee shall have and be entitled to a lien on the Premises equal in priority to the Senior Lien held or enjoyed by the holder of such Senior Lien, which shall remain in existence and benefit Mortgagee discharged, and Mortgagee shall be subrogated to, and receive and enjoy all rights and benefits possessed, held or enjoyed by the holder of such Senior Lien, which shall remain in existence and benefit Mortgagee in securing the Indebtedness Hereby Secured; and

(b) Mortgagee shall and does hereby indemnify, defend and hold Mortgagee harmless from any liability, loss or damage which Mortgagee may or might incur by reason of (i) exercise by Mortgagee of any rights hereunder, and (ii) any and all claims and demands whatsoever which may be asserted against Mortgagee by reason of any violation of, or liability under any Environmental Regulation (other than due solely to an act or omission of Mortgagee after obtaining possession or control of the Premises) or of any alleged obligation or undertaking on Mortgagee's part to perform or discharge any of the terms, covenants or agreements contained herein or in any instrument evidencing, securing or relating to the Indebtedness Hereby Secured or in any contracts, agreements or other instruments relating to or affecting the Premises; any and all such liability, loss or damage incurred by the Mortgagee, together with the costs and expenses, including reasonable attorney's fees incurred by Mortgagee in the defense (including preparation for defense) of any claims or demands therefor (whether successful or not) shall be so much additional Indebtedness Hereby Secured, and the Mortgagee shall reimburse the Mortgagee therefor on demand, together with interest thereon at the Default Rate from the date of demand to the date of payment.

(c) Mortgagee shall diligently prosecute the contest of any Contested Lien by appropriate legal proceedings having the effect of staying the foreclosure or foreclosure of the Premises, and shall permit Mortgagee to be represented in any such contest and shall pay all expenses incurred by Mortgagee in so doing, including fees and expenses of Mortgagee's counsel (all of which shall constitute so much additional Indebtedness Hereby Secured bearing interest at the Default Rate until paid, and payable upon demand).

(d) Mortgagee shall pay such Contested Lien and all Lien Amounts together with interest and penalties thereon forthwith upon demand by Mortgagee if, in the opinion of Mortgagee, and notwithstanding any such contest, the Premises shall be in jeopardy or in danger of being forfeited or foreclosed; provided that if Mortgagee shall fail so to do, Mortgagee may, but shall not be required to, pay all such Contested Liens and Lien Amounts and interest and penalties thereon and such other sums as may be necessary in the judgment of the Mortgagee to obtain the release and discharge of such liens; and any amount expended by Mortgagee in so doing shall be so much additional Indebtedness Hereby Secured bearing interest at the Default Rate until paid, and payable upon demand; and provided further that Mortgagee may in such case use and apply for the purpose monies deposited as provided in Subsection 31(b) above and may demand payment upon any bond or title indemnity furnished as aforesaid.

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Clerk's Office

SECTION 10

~~41. Commitment. Mortgagee represents and agrees that the indebtedness hereby secured represented by the Note represents the proceeds of a loan made and to be made by Mortgagee to Mortgagor pursuant to Commitment dated [blank] between, together with any Application for Loan referred to therein, being called the "Commitment", and in connection herewith.~~

~~(a) The Commitment is hereby incorporated herein by reference as fully and with the same effect as if set forth herein at length.~~

40. Captions and Paragraphs. The captions and headings of the various sections of this Mortgage are for convenience only, and are not to be construed as confining or limiting in any way the scope or intent of the provisions hereof; and whenever the context requires or permits, the singular number shall include the plural, the plural shall include the singular and the masculine, feminine and neuter genders shall be freely interchangeable.

39. Waiver of Defense. No action for the enforcement of the Note or any provision hereof shall be subject to any defense which would not be good and available to the party interposing the same in an action at law upon the Note.

38. Provisions Severable. The unenforceability or invalidity of any provision or provisions hereof shall not render any other provision or provisions herein contained unenforceable or invalid.

37. Successors and Assigns. This Mortgage and each and every covenant, agreement and other provision hereof shall be binding upon the Mortgagor and his successors and assigns (including, without limitation, each and every person who from time to time records or of the Premises or any other person having an interest therein) and shall inure to the benefit of the Mortgagee and his successors and assigns and (a) whether between the Mortgagee as referred to in such reference shall be deemed to include the holder from time to time of the Note, whether so expressed or not; and (b) each such from time to time holder of the Note shall have and enjoy all of the rights, privileges, powers, options, benefits and security afforded hereby and hereunder, and may enforce every and all of the terms and provisions hereof, as fully and to the same extent and with the same effect as if such from time to time holder was herein by name specifically granted such rights, privileges, powers, options, benefits and security and was herein by name designated the Mortgagee.

36. Rights Cumulative. Each right, power and remedy herein conferred upon the 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 by the 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, and no delay or omission of the Mortgagee in the exercise of any right, power or remedy accruing hereunder or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any default or acquiescence therein.

35. Title in Mortgagee's Successors. In the event that the ownership of the Premises or any part thereof becomes vested in a person or persons other than the Mortgagee (a) the Mortgagee may, without notice to the Mortgagee, deal with such successor or successors in the same manner as with the Mortgagee and (b) the Mortgagee will give immediate written notice to the Mortgagee of any conveyance, transfer or change of ownership of the Premises; but nothing in this Section 35 contained shall vary or negate the provisions of Section 17 hereof.

(b) Notwithstanding the release of record of Senior Lien (as hereinafter defined) Mortgagee shall be subrogated to the rights and liens of all mortgages, trust deeds, superior liens, vendors' liens, mechanics' liens, or liens, charges, encumbrances, rights and equities on the Premises having priority to the lien of this Mortgage (herein generally called "Senior Liens"), to the extent that any obligation secured thereby is directly or indirectly paid or discharged with proceeds of disbursements or advances of the Indebtedness Hereby Secured, whether made pursuant to the provisions hereof or of the Note or any document or instrument executed in connection with the Indebtedness Hereby Secured.

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Property of Cook County

- 42. **Addresses and 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 personal delivery thereof or electronic facsimile transmission thereof, or the passage of three days after the mailing thereof by registered or certified mail, return receipt requested, or upon the next business day after the time of deposit and proper charges paid, with any overnight carrier with respect to next day service, to the address usually specified in the introductory paragraph hereof, or to such other place or places as any party hereof may by notice in writing designate, shall constitute service of notice hereunder.
- 43. **Mortgagee Will Not Discriminate.** Mortgagee covenants and agrees as all times to be in full compliance with provisions of law prohibiting discrimination on the basis of race, color, creed or national origin including, but not limited to, the requirements of Title VIII of the 1968 Civil Rights Act, or any substitute, amended or replacement Acts.
- 44. **Interest at the Default Rate.** Without limiting the generality of any provision herein or in the Note contained hereon and after the occurrence of any event of Default hereunder, all of the indebtedness hereby Secured shall bear interest at the Default Rate.
- 45. **Time.** Time is of the essence hereof and of the Note, Assignment, Construction Loan Agreement and all other instruments or Loan Documents delivered in connection with the Indebtedness hereby Secured.
- 46. **Applicable Law.** This Document shall be construed in accordance with the laws of the State in which the Premises are located.

47. If the Commitment is to be used for the purpose of financing the purchase of real property, the Applicant hereby agrees and warrants that the Commitment and the Application referred to therein as its own act and agreement;

(c) Mortgagee hereby covenants and agrees to duly and punctually do and perform and observe all of the terms, provisions, covenants and agreements to be done, performed or observed by the Mortgagee (or borrower) pursuant to the Commitment (and the Application forming a part hereof) and further represents that all of the representations and statements of or on behalf of Mortgagee (or borrower) in the Commitment (and the Application forming a part hereof) and in any documents and certificates delivered pursuant thereto are true and correct.

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47. The lien of this mortgage and the rights of mortgagee hereunder are subordinate and inferior to the lien of a first mortgage (the "1st Mortgage") granted by Mortgagee to ITC Commercial Finance Corp. ("ITC"), including advances now or hereafter made thereon, and to any other mortgage (together with the 1st Mortgage, the "Prior Mortgage") made to other lenders (together with ITC, the "Prior Mortgage") upon the premises granted by Mortgagee.

48. To execute any and all documents (including, but not limited to, subordination agreements) in form reasonably satisfactory to Mortgagee requested by the Prior Mortgagee or prospective Prior Mortgagee; and (a) To execute any and all documents (including, but not limited to, subordination agreements) in form reasonably satisfactory to Mortgagee requested by the Prior Mortgagee or prospective Prior Mortgagee; and (b) Upon written notice to Mortgagee that the Prior Mortgagee has accepted the Prior Mortgage, Mortgagee will, within sixty (60) days of such notice, either: (i) pay to the Prior Mortgagee all sums due the Prior Mortgagee pursuant to the Prior Mortgage, or (ii) release the lien hereof and (any) other security interests securing the indebtedness evidenced by the note.

2. In connection therewith, Mortgagee hereby agrees as follows: (a) To perform all obligations to be performed by Mortgagee under the documents evidencing and securing the Prior Mortgage; (b) In event of default under the Prior Mortgage, after the expiration of any grace or cure periods thereunder, shall constitute an event of default hereunder;

(c) Mortgagee shall promptly furnish Mortgagee with copies of any notices of default or threatened default received by Mortgagee from the Prior Mortgagee; (d) Mortgagee may, but shall not be obligated to, cure any defaults of Mortgagee occurring under the Prior Mortgage, and any sums expended by Mortgagee in curing such default shall be additional indebtedness hereunder and bear interest at the Regular Rate;

49. Upon payment in full of the outstanding principal balance hereof and Regular interest (as defined in the Note), Mortgagee shall release this mortgage and lien hereof by recorded instrument.

50. To the extent that the terms and conditions of this mortgage require consent or approval from Mortgagee and the consent of approval of the Prior Mortgagee(s) of the premises is also required, and the Prior Mortgagee provides such consent, then the Prior Mortgagee's consent or approval shall be deemed to satisfy the requirement for the consent or approval of Mortgagee and Prior Mortgagee is hereby authorized to grant such consent or approval. Mortgagee agrees to provide Mortgagee with copies of requests for any such consent or approval it may deliver together with copies of any consent or approval of Prior Mortgagee it may receive.

51. Mortgagee will provide monthly management reports of the premises, detailing cash flow and disbursements and leasing activity for such month; provided, however, that Mortgagee's failure to provide such reports shall not be deemed an event of default hereunder.

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10000 23

CHARGE TO BANK  
MORTGAGE BANK  
200 N. CHASE ST. CHICAGO, ILL. 60601

DONALD A. JOHNSON  
ROSENTHAL AND SCHEANFIELD  
55 EAST MONROE STREET, SUITE 4620  
CHICAGO, ILLINOIS 60603

THIS INSTRUMENT WAS PREPARED BY:

00137129

Property of Cook County Clerk's Office

Secretary

*[Signature]*

ATTEST:

Vice President

*[Signature]*

By

Harris Trust and Savings Bank  
Not personally but solely as Trustee as aforesaid

as of the day, month and year first above written.  
Assistant Vice President and its corporate seal to be hereunto affixed and attested by its Assistant Secretary, all  
not personally but as Trustee as aforesaid, has caused these presents to be signed by one of its Vice Presidents or

IN WITNESS WHEREOF, Harris Trust and Savings Bank

owners of the indebtedness accruing hereunder shall look solely to any one or more of (a) the Premises hereby  
conveyed for the payment thereof, by the enforcement of the lien hereby created, in the manner herein and in the  
Note (or notes, or (b) action to enforce the personal liability of any obligor, guarantor or co-maker or (c) enforcement  
of any other security or collateral securing the indebtedness hereby Secured.

as Trustee as aforesaid, and its successors, and Bank

as Trustee as aforesaid, or on said Bank  
personally, to pay said Note or any interest that may accrue thereon, or any indebtedness accruing hereunder, or  
to perform any covenant or implied herein contained, all such liability, if any, being expressly waived  
by the Mortgagee and by every person now or hereafter claiming any right or security hereunder, and that so far  
as

Bank  
understood and agreed that nothing herein contained shall be construed as creating any liability on said  
aforesaid, in the exercise of the power and authority conferred upon and filed in it as such Trustee, and it is expressly  
not personally but as Trustee

This Mortgage is executed by Harris Trust and Savings Bank ("Bank")

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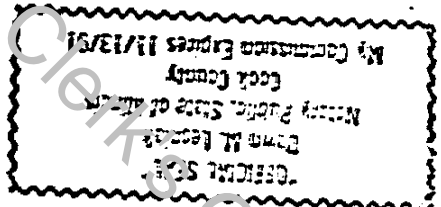
AN ALL NEW SET OF STAMPS

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Property of Cook County Clerk

My Commission Expires: \_\_\_\_\_

James M. [Signature]  
Notary Public



1. DAWN M. LESNIAK, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that HERMAN A. KOLE Assistant Vice President of Harris Trust and Savings Bank (herein called the "Assignor") and KENNETH S. [Signature] Assistant Secretary of said Assignor, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Assistant Vice President and Assistant Secretary, respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said Assignor, as further as aforesaid, for the uses and purposes therein set forth, and the said Assistant Secretary then and there acknowledged that he, as custodian of the corporate seal of said Assignor, did affix the corporate seal of said Assignor to said instrument as his own free and voluntary act and as the free and voluntary act of said Assignor, as further as aforesaid, for the uses and purposes therein set forth.

GIVEN under my hand and personal seal this 27th day of March A.D. 1990

STATE OF ILLINOIS  
COUNTY OF COOK



62143106

1. Agreement to Pay. FOR VALUE RECEIVED, the undersigned, HARBIS TRUST AND SAVINGS BANK, not personally but solely as Trustee under Trust Agreement dated April 10, 1989 and known as Trust No. 94444 (herein called "Borrower"), promises to pay to the order of ZVI Trading Corp. - Employees' Money Purchase Pension Plan and Trust (herein called "Lender", and Lender and each successive from time to time owner and holder of this Note being herein generally called the "Holder") in the manner provided for herein the principal sum of

\$950,000

October 23, 1989

PROMISSORY NOTE

EXHIBIT A

NINE HUNDRED FIFTY THOUSAND DOLLARS together with interest on the balance of principal remaining from time to time unpaid at the rates provided for in sections 2 and 3 hereof.

2. Regular Interest. The outstanding principal balance hereof shall bear regular interest (herein called "Regular Interest") at the annual rate of 2% compounded annually (herein called the "Regular Rate") computed daily on the basis of a 365-day year for each day all or any part of the principal balance hereof shall remain outstanding.

3. Additional Interest. In addition to Regular Interest, Lender shall be entitled to additional interest (herein called "Additional Interest") equal to 14.84% of the Net Sale Price (as that term is hereinafter defined).

4. PAYMENTS. Subject to the provisions of Section 15 hereof, principal and interest upon this Note shall be paid as follows:

(a) Principal and Regular Interest shall be due and payable, if not sooner paid, on the date which is 37 months after the date of the IIT Loan closing;

(b) Additional Interest shall be due and payable hereon as and when the Net Sale Price is received; and

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(b) Upon the occurrence of any event of default under the subordinate mortgage or the subordinate assignment which has not been cured in accordance with the terms of the subordinate mortgage or the subordinate assignment.

(a) In the event that any payment of principal or interest required hereon shall remain unpaid for 10 days after lender has given borrower notice that such payment shall be due and payable, and

occurrence of any of the following events, payable at the place herein provided for payment upon the accrued interest thereon, shall be as once due and the principal sum remaining unpaid thereon, together with

7. **Default and Acceleration.** At the election of the holder, at the election of the holder, together with the principal sum remaining unpaid thereon, shall be as once due and the principal sum remaining unpaid thereon, together with the accrued interest thereon, shall be as once due and payable at the place herein provided for payment upon the occurrence of any of the following events:

8. **Priority.** This note is given to evidence an actual loan in the above amount and is secured by a subordinate mortgage (herein called the "subordinate mortgage") and a subordinate assignment of rents and leases (herein called the "subordinate assignment") made by borrower bearing even date herewith with respect to the real property commonly known as 430 West Erie, Chicago, Illinois (herein called the "property") and reference is hereby made to the subordinate mortgage and the subordinate assignment (which are incorporated herein by reference as fully and with the same effect as if set forth herein at length) for a description of the property, a statement of the covenants and agreements of borrower under the subordinate mortgage and a statement of the rights, remedies and securities afforded thereby and all other matters contained therein.

9. **Method and Place of Payment.** Payments upon this note shall be made in lawful money of the United States of America which shall be legal tender for public and private debts at the time of payment, and shall be made at such place as the holder may from time to time in writing appoint.

(c) All payments made hereon shall be applied first to pay regular interest, second to pay the principal balance hereof and third to pay additional interest.

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8. **PREPAYMENT.** The principal and interest evidenced hereby may be prepaid in whole or in part at any time without premium or penalty.
9. **TIME.** Time is of the essence of this Note and each of the provisions hereof.
10. **CAPTIONS.** The captions to the sections of this Note are for convenience only and shall not be deemed part of the text of the respective sections and shall not vary, by implication or otherwise, any of the provisions of this Note.
11. **GOVERNING LAW.** This Note shall be governed by the laws of the state of Illinois.
12. **NOTICES.** All notices required or permitted to be given hereunder to Borrower shall be given in the manner and to the place as provided in the Subordinate Mortgage for notices to Borrower.
13. **DISBURSEMENT.** This Note is made pursuant to that certain Loan Agreement dated October 23, 1989, it being understood and agreed that all draws on the LC (as that term is defined in said Loan Agreement) shall constitute disbursements of principal hereon which shall bear Regular Interest from and after the date such draws are made.
14. **NET SALES PRICE.** "Net Sales Price" shall mean the sale price for the property less all reasonable closing costs, including without limitation attorney's fees, broker's commissions, appraisal charges, title charges, prorations, transfer taxes, escrow charges and survey.
15. **EXTENSION.** Upon payment to Lender of 85% of the outstanding principal balance hereof (which shall be calculated for this purpose without regard to any compound interest added to principal) on or before the date which is 37 months after the date of the ITT Loan closing, Borrower may extend the principal and Regular Interest due date until the date which is 49 months after the date of the ITT Loan closing.

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Property of Cook County Clerk's Office

By: \_\_\_\_\_

HARRIS TRUST AND SAVINGS BANK, not personally but solely as trustee as aforesaid

16. Trustee's Execution. This Note is executed by the Borrower, as Trustee as aforesaid, and is payable only out of the property specifically described in the subordinate mortgage, and out of any other property, security or guarantees given for the indebtedness evidenced hereby, and accordingly, no personal liability shall be asserted or be enforceable against the Borrower personally or against its successors or assigns because of or in respect of this Note, or the making, issue or transfer thereof, all such liability, if any, being expressly waived by each taker and holder. IN WITNESS WHEREOF, the undersigned has caused this Preliminary Note to be duly executed all on and as of the day, month and year first above written.

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Property of Cook County Clerk's Office

P.I.N. 17-09-124-013 VOL. 500  
17-09-124-014 VOL. 500

430 West Erie  
Chicago, Illinois

LOTS 15, 16, 17 AND 18 IN BLOCK 10 IN HIGGINS LAM AND  
COMPANY'S ADDITION TO CHICAGO, IN THE EAST HALF OF THE  
NORTH WEST QUARTER OF SECTION 9, TOWNSHIP 39 NORTH, RANGE  
14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY,  
ILLINOIS.

EXHIBIT B