



Mortgage, Security Agreement and Financing Statement

THIS MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT ("Mortgage") is made as of May 31, 19 90, by

Initials:

_____, not personally, but as Trustee under Trust Agreement dated _____, 19____ and known as Trust No. _____,

_____ and _____,

_____, a _____ corporation,

_____, a _____ limited partnership,

John B. Filan _____ James L. Pandolfi _____

Stephen J. Topolski _____

d/b/a _____, a _____ **DEPT-01 RECORDING \$18.00**
general partnership or joint venture **T#2222 TRAN 8751 86/12/90 15:56:00**
#1168 # B *-90-277759

("Mortgagor") whose mailing address is 10060 Roosevelt Rd, Westchester, IL 60154

in favor of First Illinois Bank & Trust ("Mortgagee"), whose principal mailing address is 8760 W. 159th St., Orland Park, IL 60462

Mortgagor or John B. Filan, James L. Pandolfi & Stephen J. Topolski, is justly indebted to the Mortgagee including, without limitation, the principal sum of One hundred Seventy-Six Thousand and 00/100 -- Dollars (\$ 176,000.00) as evidenced by a certain PROMISSORY NOTE of even date herewith ("Note"), made payable to the order of and delivered to the Mortgagee, whereby the obligor promises to pay the Note, late charges, prepayment premiums (if any) and interest at the rate or rates, all as provided in the Note. The final payment of principal and interest, if not sooner paid, renewed, modified, extended or renegotiated shall be due on June 1, 19 95. All such payments on account of the indebtedness secured hereby shall be applied first to interest on the unpaid principal balance of the Note, secondly to any other sums due thereunder, thirdly to all other advances and sums secured hereby, and the remainder to principal.

Mortgagor, (i) in order to secure the payment of said principal sum of money and said interest and late charges and prepayment premiums, if any, in accordance with the terms, provisions and limitations of this Mortgage and of the Note; (ii) either directly or indirectly as evidenced by a guaranty of payment of performance executed by the Mortgagor or beneficiary of Mortgagor and the performance of the covenants and agreements herein contained by the Mortgagor to be performed; (iii) as security for repayment of any and all other liabilities and obligations of Mortgagor or its beneficiary now or hereafter due Mortgagee, whether direct or indirect, absolute or contingent, primary or secondary, joint or several; and (iv) in consideration of the sum of ONE DOLLAR (\$1.00) in hand paid, the receipt whereof is hereby acknowledged, Mortgagor does by these presents MORTGAGE, GRANT, REMISE, RELEASE, ALIEN AND CONVEY unto the Mortgagee and its successors and assigns, the following described real estate and all of its present and hereafter acquired estate right, title and interest therein, situated, lying and being in the County of Cook and State of Illinois to wit:

SEE LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF AS EXHIBIT "A"

Commonly known as 826 S. Loomis, Chicago, IL which, with the property hereinafter described, is collectively referred to herein as the "Premises."

This instrument Prepared By: Martha Russo

and Shall be Returned to: First Illinois Bank & Trust
Attn: Edward M. Kearney
8760 West 159th Street
Orland Park, IL 60462

-90-277759

Real Estate Tax I.D. No. _____

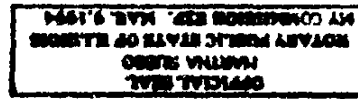
TLL 5.B. 259497 Box 15

BX 15

1800

90277759

UNOFFICIAL COPY



Martha Russo

GIVEN under my hand and notary seal this 31st day of May 1990

any act for the uses and purposes and in the capacity (if any) therein set forth. this day in person, and acknowledged that (s)he (they) signed, sealed and delivered the said instrument as (his/her/their) free and volun- personally known to me to be the same person(s) whose name(s) (is/are) subscribed to the foregoing instrument, appeared before me and

the said County, in the State aforesaid, do hereby certify that John B. Pijan, James L. Pandolff and Stephen J. Topolski a Notary Public in and for and residing in Martha Russo

STATE OF Illinois COUNTY OF Will }
SS.

John B. Pijan
James L. Pandolff
Stephen J. Topolski
INDIVIDUALS

By _____ ATTEST _____
its _____

By _____ ATTEST _____
its _____
a _____ (state) corporation

CORPORATION:
By _____ ATTEST _____
its _____

as Trustee under Agreement dated _____ and known as _____ Trust No. _____ and not personally.

LAND TRUST:
By _____ ATTEST _____
its _____

a _____ joint venture
a _____ (state) (limited/general) partnership,
(name of partnership or joint venture)

PARTNERSHIP/JOINT VENTURE:
IN WITNESS WHEREOF, the Morigator has executed this instrument as of the day and year first above written.

652,2206

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is a reasonable one and that any sale, conveyance, assignment, further incurrence or change of title, transfer of title to the Premises or any interest therein (whether voluntary or by operation of law) without the Mortgagee's prior written consent shall be an event of default hereunder. For the purpose of, and without limiting the generality of, the preceding sentence, the occurrence at any time of any of the following events shall be deemed to be an unpermitted transfer of title to the Premises and therefore an event of default hereunder:

- (a) any sale, conveyance, assignment or other transfer of, or the grant of a security interest in, all or any part of the title to the Premises or the beneficial interest or power of direction under the trust agreement with the Mortgagee, if applicable;
- (b) any sale, conveyance, assignment, or other transfer of, or the grant of a security interest in, any share of stock of the Mortgagor, (if a corporation) or the corporation which is the beneficiary or one of the beneficiaries under the trust agreement with the Mortgagee, or of any corporation directly or indirectly controlling such beneficiary corporation;
- (c) any sale, conveyance, assignment, or other transfer of, or the grant of a security interest in, any general partnership interest of the limited partnership or general partnership (herein called the "Partnership") which is the Mortgagor or the beneficiary or one of the beneficiaries under the trust agreement with the Mortgagee;
- (d) any sale, conveyance, assignment, or other transfer of, or the grant of a security interest in, any share of stock of any corporation directly or indirectly controlling any such Partnership.

Any consent by the Mortgagee, or any waiver of an event of default, under this Paragraph shall not constitute a consent to, or waiver of any right, remedy or power of the Mortgagee upon a subsequent event of default under this Paragraph.

30. HAZARDOUS MATERIALS. Mortgagor and its beneficiary (for purposes of this paragraph, collectively "Mortgagor") represents, warrants and covenants that Mortgagor has not used Hazardous Materials (as defined hereinafter) on, from, or affecting the Premises in any manner which violates federal, state or local laws, ordinances, rules, regulations, or policies governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials, and that, to the best of Mortgagor's knowledge, no prior owner of the Premises or any tenant, subtenant, prior tenant or prior subtenant have used Hazardous Materials on, from, or affecting the Premises in any manner which violates federal, state or local laws, ordinances, rules, regulations, or policies governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials. Mortgagor shall keep or cause the Premises to be kept free of Hazardous Materials. Without limiting the foregoing, Mortgagor shall not cause or permit the Premises to be used to generate, store, manufacture, refine, or process Hazardous Materials, except in compliance with all applicable federal, state and local laws or regulations, nor shall Mortgagor cause or permit, as a result of any intentional or unintentional act or omission on the part of Mortgagor or any tenant or subtenant, a release of Hazardous Materials onto the Premises or onto any other property. Mortgagor shall comply with and ensure compliance by all tenants and subtenants with all applicable federal, state and local laws, ordinances, rules and regulations, whenever and by whomsoever triggered, and shall obtain and comply with, and ensure that all tenants and subtenants obtain and comply with, any and all approvals, registrations or permits required thereunder. Mortgagor shall (a) conduct and complete all investigations, studies, sampling, and testing, and all remedial, removal, and other actions necessary to clean up and remove all Hazardous Materials, on, from or affecting the Premises (i) in accordance with all applicable federal, state, and local laws, ordinances, rules, regulations, and policies, (ii) to the satisfaction of Mortgagee, and (iii) in accordance with the orders and directives of all federal, state and local governmental authorities, and (b) defend, indemnify and hold harmless Mortgagee, its employees, agents, officers and directors, from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs, or expenses of whatever kind or nature, known or unknown, contingent or otherwise, arising out of, or in any way related to, (i) the presence, disposal, release, or threatened release of any Hazardous Materials which are on, from or affecting the soil, water, vegetation, buildings, personal property, persons, animals, or otherwise, (ii) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials; (iii) any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Materials, and/or (iv) any violation of laws, orders, regulations, requirements, or demands of government authorities, or any policies or requirements of Mortgagee, which are based upon or in any way related to such Hazardous Materials including, without limitation, attorney and consultant fees, investigation and laboratory fees, court costs, and litigation expenses. In the event the Mortgage is foreclosed, or Mortgagor tenders a deed in lieu of foreclosure, Mortgagor shall deliver the Premises to Mortgagee free of any and all Hazardous Materials, so that the condition of the Premises shall conform with all applicable federal, state and local laws, ordinances, rules or regulations affecting the Premises. For purposes of this paragraph 30, "Hazardous Materials" includes, without limit, any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous, regulated or toxic substances, or related materials defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sections 6901, et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 1801, et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Sections 6901, et seq.), and in the regulations adopted and publications promulgated pursuant thereto, or any other Federal, state or local environmental law, ordinance, rule, or regulation. Further, in the event that Mortgagor undertakes building renovation or demolition involving at least 260 linear feet of friable asbestos material on pipes or at least 160 square feet of friable asbestos materials are stripped or removed from the Premises, the Mortgagor will notify the Environmental Protection Agency as early as possible before the renovation begins. Mortgagor shall secure all permits and approvals and file all notifications required under state and local laws, ordinances and regulations prior to undertaking asbestos abatement activities. The provisions of this paragraph 30 shall be in addition to any and all other obligations and liabilities Mortgagor may have to Mortgagee at common law, and shall survive the transactions contemplated herein.

Initials:

31. REVOLVING CREDIT. In the event that the box is checked to signify that this Mortgage secures a revolving credit note, this Mortgage shall secure not only the existing indebtedness, but also such future advances, whether such advances are obligatory or to be made at the option of the Mortgagee, or otherwise, as are made within twenty years from the date hereof, to the same extent as if such future advances were made on the date of execution of this Mortgage, although there may be no advance made at the time of execution of this Mortgage, and although there may be no indebtedness outstanding at the time any advance is made. The total amount of indebtedness that is secured hereby may increase or decrease from time to time, but the total unpaid balance so secured at any one time shall not exceed a maximum principal amount of the Note, plus interest thereon, and any disbursements made for the payment of taxes, special assessments, or insurance on the Premises, with interest on such disbursements.

32. EXCULPATORY. In the event the Mortgagor executing this Mortgage is an Illinois land trust, this Mortgage is executed by the Mortgagor, not personally but as Trustee aforesaid in the exercise of the power and authority conferred upon and vested in it as such Trustee, and the Mortgagee hereby warrants that it possesses full power and authority to execute this instrument and it is expressly understood and agreed that nothing contained herein or in the Note shall be construed as creating any liability on the Mortgagor personally to pay the Note or any interest, late charge or premium that may accrue thereon, or any indebtedness secured by this Mortgage, or to perform any covenant, either express or implied herein contained, all such liability, if any, being expressly waived by Mortgagee and by every person now or hereafter claiming any right or security hereunder, and that so far as Mortgagor is personally concerned, the legal holder or holders of the Note and the owner or owners of any indebtedness secured hereby shall look solely to the Premises and Collateral hereby mortgaged, conveyed and assigned and to any other security given at any time to secure the payment thereof.

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TOGETHER with all improvements, betterments, reversions, remainders, easements, fixtures and appurtenances now or hereafter thereto belonging, and all rents, issues and profits thereof for so long and during all such times as Mortgagee may be entitled thereto (which are pledged primarily and on a party with said real estate), all tenant security deposits, utility deposits and insurance premium rebates to which Mortgagee may be entitled or which Mortgagee may hold; and all fixtures, appliances, equipment and articles (other than inventories held for sale) which relate to the use, occupancy, and enjoyment of the Premises, all of the land, estate and property heretofore described, real, personal and mixed, whether already or hereafter conveyed or otherwise, and all rights hereby conveyed and mortgaged are intended to be as a unit and are hereby understood, agreed and declared to be the maximum extent permitted by law to form part and parcel of the real estate and to be appropriated to the use of the real estate, and shall be, for the purposes of this Mortgage, deemed to be real estate and conveyed and mortgaged hereby.

IT IS FURTHER UNDERSTOOD AND AGREED THAT:

1. MAINTENANCE, REPAIR AND RESTORATION OF IMPROVEMENTS, PAYMENT OF PRIOR LIENS, ETC. Mortgagee shall: (a) promptly repair, restore or rebuild any buildings and other improvements now or hereafter on the Premises which may become damaged or destroyed to substantially the same character as prior to such damage or destruction, without regard to the availability or adequacy of any casualty insurance proceeds or benefit; (b) keep the Premises constantly in good condition and repair, without waste; (c) keep the Premises free from mechanics' liens or other liens or claims for lien not expressly subordinated to the lien hereof (collectively called "liens"), subject, however, to the rights of the Mortgagee set forth in the next Paragraph below; (d) immediately pay when due any indebtedness which may be secured by a lien or charge on the Premises or on a party with or superior to the lien hereof (no such subordinate lien to be permitted hereunder) and upon request exhibit satisfactory evidence of the discharge of such lien to Mortgagee; (e) complete within a reasonable time any building(s) or other improvement(s) now or at any time in process of erection upon the Premises; (f) comply with all federal, state and local requirements of law, regulations, ordinances, orders and judgments and all covenants, easements and restrictions of record with respect to the Premises and the use hereof; (g) make no alterations in the Premises without Mortgagee's prior written consent; (h) suffer or permit no change in the general nature of the occupancy of the Premises without Mortgagee's prior written consent; (i) observe and comply with all conditions and requirements (if any) necessary to preserve and extend all rights, easements, licenses, permits (including without limitation zoning variations and any non-conforming uses and structures), privileges, franchises and concessions applicable to the Premises or connected for in connection with any present or future use of the Premises; and (j) pay each item of indebtedness secured by this Mortgage which due according to the terms hereof and of the Note. As used in this Paragraph and elsewhere in this Mortgage, the term "indebtedness" means and includes the unpaid principal sum evidenced by the Note, together with all interest, additional interest, late charges and prepayment premiums thereon; (k) any and all other sums at any time secured by this Mortgage.

Anything in (c) and (i) above to the contrary notwithstanding, Mortgagee may, in good faith and with reasonable diligence, contest the validity of amount of any lien not expressly subordinated to the lien hereof, and delay payment and discharge thereof during the pendency of such contest, provided: (1) that such contest shall have the effect of preventing the sale or foreclosure of the Premises or any part thereof, or any interest therein, to said party; such lien; (ii) that, within ten (10) days after Mortgagee has been notified of the assertion of such lien, Mortgagee shall have notified Mortgagee in writing of Mortgagee's intention to contest such lien; and (iii) that Mortgagee shall have deposited with Mortgagee, a sum of money which shall be sufficient in the judgment of Mortgagee to pay in full such lien and all interest which might become due thereon, and shall keep on deposit an amount so sufficient at all times, increasing such amount to cover additional interest whenever, in the judgment of Mortgagee, such increase is advisable. Such deposits are to be held without any allowance of interest. If Mortgagee shall fail to prosecute such contest with reasonable diligence or shall fail to pay the amount of the lien plus any interest, cost and expenses finally determined to be due upon the conclusion of such contest, to the extent such amount exceeds the amount which Mortgagee will pay as provided below or shall fail to maintain sufficient funds on deposit as hereinafter provided, Mortgagee may, at its option, apply the money so deposited in payment of or on account of such lien, or that part thereof then unpaid, together with all interest thereon. If the amount of money so deposited is insufficient for the payment in full of such lien, together with all interest thereon, Mortgagee shall forthwith, upon demand, deposit with Mortgagee a sum which, when added to the funds then on deposit, shall be sufficient to make such payment in full. Mortgagee shall, upon the final disposition of such contest, apply the money so deposited in full payment of such lien or that part thereof then unpaid (provided Mortgagee is not, then in default hereunder) when so requested in writing by Mortgagee and when furnished by Mortgagee with sufficient funds to make such payment in full and with evidence satisfactory to Mortgagee of the amount of payment to be made.

2. PAYMENT OF TAXES. Mortgagee shall pay all general taxes due or a penalty or interest on such taxes, and shall pay special taxes, special assessments, water charges, sewer service charges, and all other charges a part of the Premises of any nature whatsoever when due, and shall, upon written request, furnish to Mortgagee duplicate receipts therefor within thirty (30) days following the date of payment. Mortgagee shall pay in full, under protest, any tax or assessment which Mortgagee may desire to contest, in the manner provided by law.

3. TAX DEPOSITS. Unless waived from time to time by Mortgagee in writing, Mortgagee shall deposit with the Mortgagee, commencing on the date of disbursement of the proceeds of the loan secured hereby and on the first day of each month following the month in which said disbursement occurs (the amount of such taxes and assessments (general and special) next due upon the Premises) agreed to by Mortgagee, a sum equal to the amount of all real estate taxes and assessments (general and special) next due upon the Premises (the amount of such taxes next due to be based upon the Mortgagee's reasonable estimate as to the amount of taxes and assessments to be levied and assessed) reduced by the amount, if any, then on deposit with the Mortgagee, divided by the number of months to elapse before the next due date when such taxes and assessments will first become due and payable. Such deposits are to be held without any allowance of interest to Mortgagee and are to be used for the payment of taxes and assessments (general and special) on the Premises next due and payable when they become due. If the funds so deposited are insufficient to pay any such taxes or assessments (general or special) when the same become due and payable, the Mortgagee shall, within ten (10) days after receipt of demand herefor from the Mortgagee, deposit such additional funds as may be necessary to pay such taxes and assessments (general and special) in full. If the funds so deposited exceed the amount required to pay such taxes and assessments (general and special) for any year, the excess shall be applied, on a subsequent deposit or deposits. Said deposits shall be held separate and apart from any other funds of the Mortgagee.

Anything in this Paragraph 3 to the contrary notwithstanding, if the funds so deposited are insufficient to pay any such taxes or assessments (general or special) or any installment thereof, Mortgagee will, not later than the fifth (5th) day prior to the last day of which the same may be paid with-out penalty or interest, deposit with the Mortgagee the full amount of any such deficiency.

If any such taxes or assessments (general or special) shall be levied, charged, assessed or imposed upon or for the Premises, or any portion thereof, and if such taxes or assessments shall also be a levy, charge, assessment or imposition upon or for any other premises not encumbered by the lien of this Mortgage, then the computation of any amount to be deposited under this Paragraph 3 shall be based upon the entire amount of such taxes or assessments, and Mortgagee shall not have the right to apportion the amount of any such taxes or assessments for the purposes of such computation.

3A. INSURANCE DEPOSITS. For the purpose of providing funds with which to pay premiums when due on all policies of fire and other hazard insurance, Mortgagee shall deposit with the Mortgagee, commencing on the date of disbursement of the loan secured hereby and on the first day of each month following the month in which said disbursement occurs (unless otherwise agreed to by Mortgagee), a sum equal to the Mortgagee's estimate of the premium to be paid on such policies reduced by the amount, if any, then on deposit with the Mortgagee, divided by the number of months to elapse before the date of disbursement of the loan secured hereby and on the first day of each month following the month in which said disbursement occurs (unless otherwise agreed to by Mortgagee), a sum equal to the Mortgagee's estimate of the amount of such taxes or assessments for the purposes of such computation.

4. MORTGAGEE'S INTEREST IN AND USE OF TAX AND INSURANCE DEPOSITS; SECURITY INTEREST. In the event of a default hereunder, Mortgagee on account of any deposit made hereunder and said deposit need not be kept separate and apart from any other funds of the Mortgagee.

Mortgagee may, at its option but without being required so to do, apply any monies at the time of deposit pursuant to Paragraphs 3 and 3A hereof or any of Mortgagee's obligations contained herein or in the Note, in such order and manner as the Mortgagee may elect. When the indebtedness of the Mortgagee in and to all monies at any time on deposit pursuant to Paragraphs 3 and 3A hereof and such monies and all of Mortgagee's rights and interest therein are hereby assigned to Mortgagee, all as which made hereunder and shall, in the absence of default hereunder, be applied by the Mortgagee for the purposes of the payment of taxes or assessments or insurance premiums. Mortgagee shall not be liable for any act or omission taken in good faith, but only for its gross negligence or willful misconduct.

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5. **INSURANCE.** Mortgagor shall keep all buildings and improvements and the Collateral (defined in Paragraph 27 below) now or hereafter situated on said Premises insured against loss or damage by fire or a so-called "Act of God" and against such other hazards as may reasonably be required by Mortgagee, including without limitation of the generality of the foregoing: (a) rent loss or business interruption insurance whenever in the opinion of Mortgagee such protection is necessary; and (b) flood insurance whenever same is available and, in the opinion of Mortgagee, such protection is necessary. Mortgagor shall also provide insurance coverages with such limits for personal injury and death and property damage as Mortgagee may require. All policies of insurance to be furnished hereunder shall be in forms, companies and amounts satisfactory to Mortgagee, with waiver of subrogation and replacement cost endorsements and a standard non-contributory mortgagee clause attached to all policies, including a provision requiring that the coverages evidenced thereby shall not be terminated or materially modified without thirty (30) days' prior written notice to the Mortgagee. Mortgagor shall deliver all original policies, including additional and renewal policies, to Mortgagee and, in the case of insurance about to expire, shall deliver renewal policies not less than thirty (30) days prior to their respective dates of expiration.

Mortgagor shall not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained hereunder unless Mortgagee is included thereon under a standard non-contributory mortgagee clause acceptable to Mortgagee. Mortgagor shall immediately notify Mortgagee whenever any such separate insurance is taken out and shall promptly deliver to Mortgagee the original policy or policies of such insurance. In the event of a foreclosure of the lien of this Mortgage, or of a transfer of title to the Premises either in lieu of foreclosure or by purchase at the foreclosure sale, all interest in all insurance policies in force shall pass to Mortgagee, transferee or purchaser, as the case may be.

Within ninety (90) days following the end of each fiscal year of Mortgagor, at the request of the Mortgagee, Mortgagor agrees to furnish evidence of replacement cost, without cost to the Mortgagee, such as are regularly and ordinarily made by insurance companies to determine the then replacement cost of the building(s) and other improvements on the Premises.

6. **ADJUSTMENT OF LOSSES WITH INSURER AND APPLICATION OF PROCEEDS OF INSURANCE.** In case of the loss or damage by fire or other casualty, Mortgagee is authorized: (a) to settle and adjust any claim under insurance policies which insure against such risks; or (b) to allow Mortgagor to agree with the insurance company or companies on the amount to be paid in regard to such loss. In either case, Mortgagee is authorized to collect and receipt for any such insurance monies. So long as: (a) each lease applicable to the Premises is in full force and effect and each tenant thereunder is not in default and such loss or damage shall not result in the termination or cancellation of any of those leases or give any tenant thereunder the right to terminate or cancel its lease; (b) no insurer denies liability as to any insured or claims any right of participation in any of the Mortgagee's security; and (c) this Mortgage is not in default; then such insurance proceeds, after deducting therefrom any expense incurred by Mortgagee in the collection thereof, shall be made available by the Mortgagee for the repair, rebuilding or restoration of the building(s) and other improvement(s) on the Premises. In all other cases, such insurance proceeds may, at the option of the Mortgagee, be: (a) applied in reduction of the indebtedness, whether due or not; or (b) held by the Mortgagee and used to reimburse Mortgagor (or any lessee) for the cost of the repair, rebuilding or restoration of the building(s) and other improvement(s) on the Premises. In any event, the building(s) and other improvement(s) shall be so repaired, restored or rebuilt so as to be of at least equal value and substantially the same character as prior to such damage or destruction. If the insurance proceeds are made available for repair, rebuilding or restoration, such proceeds shall be disbursed upon the "Disbursing Party" (hereinafter defined) being furnished with satisfactory evidence of the cost of completion thereof and with architects' certificates, waivers of lien, contractors' and subcontractors' sworn statements, title continuations and other evidence of cost and payments so that the Disbursing Party can verify that the amounts disbursed from time to time are represented by completed and in-place work and that said work is free and clear of mechanics' lien claims. No payment made prior to the final completion of the work shall exceed ninety per cent (90%) of the value of the work performed from time to time, and at all times the undisbursed balance of such proceeds remaining in the hands of the Disbursing Party shall be at least sufficient to pay for the cost of completion of the work free and clear of liens. If the cost of rebuilding, repairing or restoring the buildings and other improvements may reasonably exceed the sum of FIFTY THOUSAND DOLLARS (\$50,000.00), then the Mortgagee must approve plans and specifications of such work before such work shall be commenced. Any surplus which may remain out of said insurance proceeds after payment of the cost of repair, rebuilding, restoration and the reasonable charges of the Disbursing Party, shall, at the option of the Mortgagee, be applied on account of the indebtedness or paid to any party entitled thereto as the same appear on the records of the Mortgagee. No interest shall be allowed to Mortgagor on any proceeds of insurance held by the Disbursing Party.

As used in this Paragraph 6, the term "Disbursing Party" refers to the Mortgagee and/or to any title insurance company selected by the Mortgagee.

7. **STAMP TAX; EFFECT OF CHANGES IN LAWS REGARDING TAXATION.** If, by the laws of the United States of America or of any state or subdivision thereof having jurisdiction over the Mortgagor, any tax is due or becomes due in respect to the Note or this Mortgage, the Mortgagor covenants and agrees to pay such tax in the manner required by any such law. The Mortgagor further covenants to reimburse the Mortgagee for any sums which Mortgagee may expend by reason of the imposition of any tax on the issuance of the Note.

In the event of the enactment of any law of the state in which the Premises are located imposing upon the Mortgagee the payment of the whole or any part of taxes, assessments or charges on the lien of this Mortgage, or charging 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 manner of collection of taxes, so as to affect this Mortgage or the debt secured hereby 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, however, that if in the opinion of counsel for the Mortgagee: (a) it might be unlawful to require Mortgagor to make such payment; or (b) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law; then and in any such event, the Mortgagee may elect, by notice in writing given to the Mortgagor, to declare all of the indebtedness to be and become due and payable sixty (60) days from the giving of such notice.

8. **OBSERVANCE OF LEASE ASSIGNMENT.** As additional security for the payment of the Note and for the faithful performance of the terms and conditions contained herein, Mortgagor and its beneficiary or beneficiaries do hereby assign to the Mortgagee all of their right, title and interest as landlords in and to the present leases and all future leases of the Premises. All leases of the Premises are subject to the approval of the Mortgagee as to form, content and tenant(s).

Mortgagor will not and Mortgagor's beneficiary or beneficiaries will not, without Mortgagee's prior written consent: (i) execute any assignment or pledge of any rents or any leases of the Premises except an assignment or pledge securing the Indebtedness in favor of Mortgagee; or (ii) accept any payment of any installment of rent more than thirty (30) days before the due date thereof; or (iii) make any lease of the Premises except for actual occupancy by the tenant thereunder.

Mortgagor shall not and the beneficiary of Mortgagor, if any, shall not enter into or permit to be entered into any management contract, assignment or sublease of any lease, license or concession pertaining to the Premises without the prior written approval of Mortgagee having first been obtained and following such approval shall not amend or modify the same without further written approval of Mortgagee.

Mortgagor at its sole cost and expense will: (i) at all times promptly and faithfully abide by, discharge and perform all of the covenants, conditions and agreements contained in all leases of the Premises, on the part of the landlord thereunder to be kept and performed; (ii) enforce or secure the performance of all of the covenants, conditions, and agreements of such leases on the part of the tenants to be kept and performed, but Mortgagor shall not and Mortgagor's beneficiary or beneficiaries shall not modify, amend, cancel, terminate or accept surrender of any lease without prior written consent of Mortgagee; (iii) appear in and defend any action or proceeding arising under, growing out of or in any manner connected with such leases or the obligations, duties or liabilities of the landlord or of any tenants thereunder; (iv) transfer and assign or cause to be separately transferred and assigned to Mortgagee, upon written request of Mortgagee, any lease or leases of the Premises heretofore or hereafter entered into, and make, execute and deliver to Mortgagee upon demand, any and all instruments required to effectuate said assignment; (v) furnish Mortgagee, within ten (10) days after a request by Mortgagee so to do, a written statement containing the names of all tenants and the terms of all leases of the Premises, including the spaces occupied and the rentals payable thereunder; and (vi) exercise within five (5) days of any demand therefor by Mortgagee any right to request from the tenant under any lease of the Premises a certificate with respect to the status thereof.

Nothing in this Mortgage or in any other documents relating to the Note secured hereby shall be construed to obligate Mortgagee, expressly or by implication, to perform any of the covenants of the landlord under any of the leases assigned to Mortgagee or to pay any sum of money or damages therein provided to be paid by the landlord, each and all of which covenants and payments Mortgagor agrees to perform and pay or cause to be performed and paid.

At the option of the Mortgagee, this Mortgage shall become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to insurance proceeds or any award in eminent domain), to any one or more leases affecting any part of the Premises, upon the execution by Mortgagee and recording or registration thereof, at any time hereafter, in the office wherein this Mortgage was registered or filed for record, of a unilateral declaration to that effect.

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26.1 Release of Previous Holder. The word "Mortgagee" when used herein shall include the successors and assigns of the original Mortgagee named on Page 1 hereof, and the holder or holders, from time to time. However, whenever the Note is sold, each prior holder shall be automatically freed and relieved, on and after the date of such sale, of all liability with respect to the performance of each covenant and obligation of Mortgagee hereinafter to be performed, provided that any monies in which the Mortgagee has an interest, which monies are then held by the seller of the Note, are turned over to the purchaser of the Note.

26.2 Severability and Applicable Law. In the event one or more of the provisions contained in this Mortgage or in the Note or in any other document given at any time to secure the payment of the Note shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall, at the option of the Mortgagee, not affect any other provision of this Mortgage, the Note or other document and the Mortgage, the Note or other document shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein, or thereat. The validity and interpretation of this Mortgage and the Note it secures are to be construed in accordance with and governed by the laws of the State in which the Premises are situated.

26.3 Governmental Compliance. Mortgagee shall not by act or omission permit any lands or improvements not subject to the lien of this Mortgage to include the Premises or any part thereof in fulfillment of any governmental requirement, and Mortgagee hereby assigns to Mortgagee any and all rights to give consent for all or any portion of the Premises to be so used. Similarly, no lands or improvements comprising the Premises shall be included with any lands or improvements not subject to the lien of this Mortgage in fulfillment of any governmental requirement. Mortgagee shall not by act or omission impair the integrity of the Premises as a single zoning lot separate and apart from all other premises. Any act or omission by Mortgagee which would result in a violation of any of the provisions of this paragraph shall be void.

26.4 Stoppage Certificate. Mortgagee, within fifteen (15) days after mailing of a written request by the Mortgagee, agrees to furnish from time to time a signed statement setting forth the amount of the indebtedness and whether or not any default, offset or defense then is alleged to exist against the indebtedness and, if so, specifying the nature thereof.

26.5 Non-Judicial Foreclosure. After an event of default, Mortgagee shall have the right and option to commence a civil action to foreclose the lien of this Mortgage and to obtain an order or judgment of foreclosure and sale subject to the rights of any tenant or tenants of the Premises. The failure to foreclose any tenant or tenants of the Premises as party defendant or defendants in any such civil action or the failure of any such order or judgment to foreclose their rights shall not be asserted by the Mortgagee or as a defense in any civil action instituted to collect the indebtedness secured hereby, or any part thereof or any deficiency remaining unpaid after foreclosure and sale of the Premises, any statute or rule of law at any time existing to the contrary notwithstanding.

26.6 Evasion of Payment and Premium. If maturity of the indebtedness is accelerated by the Mortgagee because of an event of default, as herein provided, and a tender of payment is made by or on behalf of the Mortgagee in an amount necessary to satisfy the indebtedness at any time prior to judicial confirmation of foreclosure, such tender shall constitute an evasion of the prepayment premium provided for in the Note, if any, and shall be treated as a prepayment thereof. Any such tender shall therefore include the prepayment premium, if any required under the Note, or if at that time there is no prepayment premium provided for in the Note, then such payment will include a prepayment premium of two percent (2%) of the then unpaid principal balance of the Note.

27. SECURITY AGREEMENT AND FINANCING STATEMENT. Mortgagee and Mortgagee agree: (i) that this Mortgage shall constitute a Security Agreement within the meaning of the Uniform Commercial Code (the "Code"), of the State in which the Premises are located with respect to all sums on deposit with the Mortgagee pursuant to paragraphs 6 and 18 hereof ("Deposits"), and with respect to any proceeds included in the definition herein of the word "Premises" which property shall not be deemed to form a part of the real estate described in EXHIBIT "A" or may not constitute a "fixure" (within the meaning of Section 9-313 of the Code), and all replacement of such property, substitutions for such property, additions to such property, books and records relating to the Premises and operation thereof; and the proceeds thereof (said property, replacements, substitutions, additions and the proceeds thereof being sometimes herein collectively referred to as the "Collateral"), and (ii) that a security interest in and to the Collateral and the Deposits is hereby granted to the Mortgagee, and all of Mortgagee's right, title and interest therein are hereby assigned to the Mortgagee, all to secure payment of the indebtedness secured to secure performance by the Mortgagee of the terms, covenants and provisions hereof. In the event of a default under this Mortgage, the Mortgagee, pursuant to the appropriate provisions of the Code, shall have an option to proceed with respect to both the real property and Collateral in accordance with its rights, powers and remedies with respect to the real property, in which event the default provisions of the Code shall not apply. The parties agree that if the Mortgagee shall elect to proceed with respect to the real property, the Mortgagee shall be permitted to remove from the Collateral except that so long as the Mortgagee is not in default hereunder, Mortgagee shall be permitted to sell or otherwise dispose of the Collateral when obsolete, worn out, inadvisable or unnecessary for use in the operation of the Premises, but only upon replacing the same or substituting for the same other Collateral at least equal in value and utility to the initial value and utility of that disposed of and in such a manner that said replacement or substituted Collateral shall be subject to the security interest created hereby and that the security interest of the Mortgagee shall be perfected and first in priority, it being expressly understood and agreed that all replacements, substitutions and additions to the Collateral shall be and become immediately subject to the security interest of this Mortgage and covered hereby. The Mortgagee shall be permitted and protected in accordance with the requirements of any present or future law, and (ii) an inventory of the Collateral in reasonable detail. The Mortgagee covenants and represents that all Collateral now is, and that all replacements, interest, substitutions thereof or additions thereto, unless the Mortgagee otherwise consents, will be free and clear of liens, encumbrances, title retention devices and security interests of others. The Mortgagee and Mortgagee agree, to the extent permitted by law, that: (i) all of the goods described within the definition of the word "Premises" hereof are or are to become fixtures on the land described in EXHIBIT "A", (ii) this instrument, upon recording or registration in the real estate records of the proper office, shall constitute a "fixture filing" within the meaning of Sections 9-313 and 9-402 of the Code, and (iii) Mortgagee is a record owner of the land described in EXHIBIT "A".

If the Collateral is sold in connection with a sale of the Premises, Mortgagee shall notify the Mortgagee prior to such sale and shall require as a condition of such sale that the purchaser specifically agree to assume Mortgagee's obligations as to the security interest herein granted and to execute whatever agreements and things are deemed necessary by the Mortgagee to maintain Mortgagee's first perfected security interest in the Collateral, Deposits and the deposits described in Paragraph 4 above.

28. LIEN FOR LOAN COMMISSIONS, SERVICE CHARGES AND THE LIKE. So long as the original Mortgagee named on Page 1 hereof is the owner of the Note, and regardless of whether any proceeds of the loan evidenced by the Note have been disbursed, this Mortgage also secures the payment of all loan commissions, service charges, fees to its attorneys (including in-house staff), liquidated damages, expenses and advances due or incurred by the Mortgagee in connection with the loan transaction intended to be secured hereby, all in accordance with the application of, and due to, the Mortgagee. The Mortgagee shall be deemed to have accepted by one or more of Mortgagee's beneficiaries in connection with said loan, if applicable, the credit worthiness of Mortgagee and/or Mortgagee's guarantor or guarantors (if applicable), and the same to be acceptable and relied and continues to rely upon same as the means of repayment of the loan. Mortgagee also evaluated the background and experience of Mortgagee and/or its beneficiary or guarantor (if applicable) in owning and operating property such as the Premises, found the same to be acceptable and relied and continues to rely upon same as the means of maintaining the value of the Premises which is Mortgagee's security for the loan. It is recognized that Mortgagee's interest in the loan portfolio at current interest rates by either making new loans at such rates or collecting assumption fees and/or increasing the interest rate on a loan the security for which is purchased by a party other than the original Mortgagee and/or its beneficiary (if applicable), Mortgagee and/or Mortgagee's beneficiary (if applicable) further recognize that any secondarily placed upon the Premises, or the beneficial interest of Mortgagee (if applicable) may divert funds which would otherwise be used to pay the Note secured hereby. (c) could result in acceleration and foreclosure by any such junior encumbrance which would force Mortgagee to take measures and incur expenses to protect its security. (c) would detract from the value of the Premises should Mortgagee come into possession thereof with the intention of selling same; and (d) impair Mortgagee's right to accept a deed in lieu of foreclosure, as a foreclosure by Mortgagee would be necessary to clear the title to the Premises.

In accordance with the foregoing and for the purposes of (i) protecting Mortgagee's security, both of repayment by the indebtedness and of value of the Premises, (ii) giving Mortgagee the full benefit of its bargain and contract with Mortgagee and/or beneficiary (if applicable) and Mortgagee, (iii) allowing Mortgagee to raise the interest rate and/or collect assumption fees, and (iv) keeping the Premises and the beneficial interest (if applicable) free of subordinate financing liens, beneficiary (if appropriate) and Mortgagee agree that if this Paragraph be deemed a restraint on alienation, that it

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15. APPOINTMENT OF RECEIVER OR MORTGAGEE IN POSSESSION. Upon, or at any time after the commencement of an action to foreclose this Mortgage, the court in which such action was commenced may, upon request of the Mortgagee, appoint a receiver of the Premises either before or after foreclosure sale, without notice and without regard to the solvency or insolvency of Mortgagor at the time of application for such receiver and without regard to the then value of the Premises or whether the same shall be then occupied as a homestead or not; and the Mortgagee or any holder of the Note may be appointed as such receiver or as Mortgagee in possession. Such receiver or the Mortgagee in possession shall have power to collect the rents, issues and profits of the Premises during the pendency of such foreclosure action and, in case of a sale and a deficiency, during the full statutory period of redemption (if any), whether there be redemption or not, as well as during any further times (if any) when Mortgagor, except for the intervention of such receiver or Mortgagee in possession, would be entitled to collect such rents, issues and profits, and all other powers which be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during the whole of said period. The court from time to time may authorize the receiver or Mortgagee in possession to apply the net income in its hands in payment in whole or in part of: (a) the Indebtedness secured hereby or by any order or judgment foreclosing the lien of this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or the lien of such order or judgment, provided such application is made prior to foreclosure sale; (b) the deficiency in case of a sale and deficiency

16. RIGHTS CUMULATIVE. Each right, power and remedy conferred upon the Mortgagee by this Mortgage and by all other documents evidencing or securing the indebtedness and conferred by law and in equity is cumulative and in addition to every other right, power and remedy, express or implied, given now or hereafter existing, at law and in equity; and each and every right, power and remedy herein or therein 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 of 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, or discontinuance by, 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.

17. MORTGAGEE'S RIGHT OF INSPECTION. Mortgagee, its representatives, agents or participants shall have the right to inspect the Premises at all reasonable times and access thereto shall be permitted for that purpose

18. EMINENT DOMAIN AND/OR CONDEMNATION. Mortgagor hereby assigns, transfers and sets over unto the Mortgagee the entire proceeds of any claim for damages for any of the Premises taken or damaged under the power of eminent domain or by condemnation. So long as: (a) any applicable lease is in full force and effect and each tenant thereunder is not in default and such taking shall not result in the termination or cancellation of any of those leases or give any tenant thereunder the right to cancel its lease; (b) the Premises require repair, rebuilding or restoration; and (c) this Mortgage is not in default, then any award, after deducting therefrom any expenses incurred in the collection thereof, shall be made available by the Mortgagee for the repair, rebuilding or restoration of the Premises in accordance with plans and specifications to be submitted to and approved by the Mortgagee.

In all other cases, the Mortgagee may elect to apply the proceeds of the award upon or in reduction of the Indebtedness, whether due or not, or make those proceeds available for repair, restoration or rebuilding of the Premises in accordance with plans and specifications to be submitted to and approved by the Mortgagee. In any case where proceeds are made available for repair, rebuilding or restoration, the proceeds of the award shall be paid out in the same manner and under the same conditions provided in Paragraph 6 hereof for the payment of insurance proceeds toward the cost of repair, rebuilding or restoration. Any surplus which may remain out of said award after payment of such cost of repair, rebuilding, restoration and the reasonable charges of the Disbursing Party shall, at the option of Mortgagee, be applied on account of the Indebtedness or paid to any part entitled thereto as the same appear on the records of the Mortgagee. No interest shall be allowed to Mortgagor on account of any proceeds of any award held by the Mortgagee.

19. RELEASE UPON PAYMENT AND DISCHARGE OF MORTGAGOR'S OBLIGATIONS. Mortgagee shall release (in whole or partially) this Mortgage and the lien (in whole or partially) by proper instrument upon payment and discharge of all Indebtedness (or applicable agreed portion) secured hereby (including any prepayment charges and late charges provided for herein or in the Note) and upon payment of a reasonable fee to Mortgagee for the preparation and execution of such proper instrument as shall be determined by Mortgagee in its absolute discretion.

20. GIVING OF NOTICE. Any notice which either party hereto may desire or be required to give to the other party shall be in writing and the mailing thereof, by certified mail addressed to the Mortgagor or to the Mortgagee, as the case may be, at the respective addresses set forth on the first page hereof or at such other place as any party hereto may by notice in writing designate as a place for service of notice, shall constitute service of notice hereunder.

21. WAIVER OF DEFENSE. No action for the enforcement of the lien or of any provision hereof shall be subject to any defense which would not be good and available to the party interposing same in an action at law upon the Note.

22. WAIVER OF STATUTORY RIGHTS. Mortgagor shall not and will not (nor shall any beneficiary of Mortgagor) apply for or avail itself of any appraisalment, valuation, stay, extension or exemption laws or any so-called "Moratorium Laws," now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of the lien of this Mortgage, but hereby waives the benefit of such laws. Mortgagor, for itself and all who may claim through or under it, including its beneficiary, waives any and all right to have the property and estates comprising the Premises marshalled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Premises sold as an entirety. Mortgagor does hereby expressly waive any and all rights of redemption from sale under any order or judgment of foreclosure of the lien of this Mortgage on behalf of the Mortgagor, the trust estate and all persons beneficially interested therein and each and every person, except judgment creditors of the Mortgagor in its representative capacity and of the trust estate, acquiring any interest in or title to the Premises subsequent to the date of this Mortgage.

23. FURNISHING OF FINANCIAL STATEMENTS TO MORTGAGEE. Mortgagor covenants and agrees that it will keep and maintain, or cause its beneficiary or beneficiaries from time to time to keep and maintain, books and records of account in which full, true and correct entries shall be made of all dealings and transactions relative to the Premises, which books and records of account shall, at reasonable times and on reasonable notice, be open to the inspection of the Mortgagee and its accountants and other duly authorized representatives. Such books of record and account shall be kept and maintained in accordance with generally accepted accounting principles consistently applied.

23.1 Mortgagor covenants and agrees to furnish to the Mortgagee, within ninety (90) days following the end of every fiscal year applicable to the operation of the improvements on the Premises, a copy of a report of the operations of the improvements on the Premises for the year then ended, to be certified by the Mortgagor or its beneficiary (or a general partner, if the beneficiary of Mortgagor is a partnership or the chief financial officer if the beneficiary of Mortgagor is a corporation) satisfactory to the Mortgagee, including a balance sheet and supporting schedules and containing a detailed statement of income and expenses. Each such certificate to each such annual report shall certify that the certifying party examined such records as were deemed necessary for such certification and those statements are true, correct and complete.

23.2 If Mortgagor fails to furnish promptly any report required by Paragraph 23.1, the Mortgagee may elect (in addition to exercising any other right, remedy and power) to make an audit of all books and records of Mortgagor and its beneficiaries which in any way pertain to the Premises and to prepare the statement or statements which Mortgagor failed to procure and deliver. Such audit shall be made and such statement or statements shall be prepared by an independent Certified Public Accountant to be selected by the Mortgagee. Mortgagor shall pay all expenses of the audit and other services which expenses shall be secured hereby as additional Indebtedness and shall be immediately due and payable with interest thereon at the rate set forth in the Note applicable to a period when default exists thereunder.

24. FILING AND RECORDING CHARGES AND TAXES. Mortgagor will pay all filing, registration, recording and search and information fees, and all expenses incident to the execution and acknowledgement of this Mortgage and all other documents securing the Note and all federal, state, county and municipal taxes, other taxes, duties, imposts, assessments and charges arising out of or in connection with the execution, delivery, filing, recording or registration of the Note, this Mortgage and all other documents securing the Note and all assignments thereof.

25. BUSINESS PURPOSE; USURY EXEMPTION. Mortgagor hereby represents, or if applicable Mortgagor has been advised by its beneficiaries, that the proceeds of the loan secured by this Mortgage will be used for the purposes specified in Paragraph 6404 of Chapter 17 of the 1981 Illinois Revised Statutes, and that the principal obligation secured hereby constitutes a "business loan" which comes with the purview and operation of said paragraph.

26. MISCELLANEOUS. Binding Nature. This Mortgage and all provisions hereof shall extend to and be binding upon the original Mortgagor named on Page 1 hereof and its successors, grantees, assigns, each subsequent owner or owners of the Premises and all persons claiming under or through Mortgagor; and the word "Mortgagor" when used herein shall include all such persons and all persons primarily and secondarily liable for the payment of the Indebtedness or any part thereof, whether or not such persons shall have executed the Note or this Mortgage and shall also include any beneficiary of Mortgagor, direct or indirect.

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