

# UNOFFICIAL COPY

90338219

## THE FIRST NATIONAL BANK OF DES PLAINES LEASEHOLD MORTGAGE

THIS MORTGAGE is dated as of June 29, 1990, and is between James Mandas ("Mortgagor") and The First National Bank of Des Plaines, a national banking association ("Mortgagee"), located at 701 Lee Street, Des Plaines, Illinois 60016.

90338219

WITNESSETH:

DEPT-01 RECORDING \$27.50  
T#3333 TRAN 2031 07/13/90 16:10:00  
#7657 # \*-90-338219  
COOK COUNTY RECORDER

Nicholas T. Liapes ("Debtor") has executed an Installment Note dated as of the date of this Mortgage, payable to the order of the Mortgagee ("Note") in the principal amount of One Million One Hundred Thousand Dollars (\$1,100,000.00). The Note is payable in eleven monthly consecutive installments of \$10,500.00 each commencing on August 15, 1990 and continuing on the 15th day of each month thereafter with a final installment of the balance of the unpaid principal and interest on July 15, 1991 and to pay interest at the per annum rate of 12% on the 15th day of each month commencing on August 15, 1990 and on the 15th day of each month thereafter until maturity on the principal balance remaining from time to time unpaid. Interest after default or maturity of the Note on the principal balance of the Note remaining from time to time unpaid shall be at the per annum rate of 15%. So long as the Debtor is not in default under the Note or any renewal and the Mortgagee has not accelerated all amounts due, the Note shall be renewed on an annual basis on July 15, 1991, July 15, 1992, July 15, 1993, and July 15, 1994 by the Mortgagee. Any renewal Note shall bear interest at the rate of 2% in excess of the Mortgagee's then prevailing Prime Rate on the date of renewal. At no time shall the interest rate on any renewal note be less than 8% per annum nor more than 16% per annum regardless of the prevailing Prime Rate on the date of the renewal of the Note. The unpaid principal balance together with any accrued and unpaid interest shall be due and payable in full not later than July 15, 1995. The Debtor shall have the right to prepay all or any portion of the Note without penalty.

In consideration of any loan, extension of credit, or other financial accommodation made by Mortgagee to Mortgagor and/or Debtor and to secure payment of the indebtedness evidenced by the Note and the Liabilities (defined below), including any and all renewals and extensions of the Note, Mortgagor does by these presents WARRANT, CONVEY and MORTGAGE unto Mortgagee, all of Mortgagor's estate, right, title and interest in the Leasehold situated in and being in the County of Cook, and State of Illinois, created by that certain Lease dated February 15, 1985, by and between First United Trust Company as successor to Mount Prospect State Bank, not personally but solely as Trustee under a Trust Agreement dated March 16, 1971 and known as Trust No. 181 ("Lessor") and the Black Ram, Inc. ("Lease") which Lease was subsequently assigned by the Black Ram, Inc. to Mortgagor on the 27th day of June 1990 of the real estate legally described on attached Exhibit A and made part hereof, which is referred to herein as the "Premises", together with all improvements, buildings, tenements, hereditaments, appurtenances, gas, oil, minerals, easements located in, on, over or under the Premises, and all types and kinds of furniture, fixtures, apparatus, machinery and equipment, including without limitation, all of the foregoing used to supply heat, gas, air conditioning, water, light, power, refrigeration or ventilation (whether single units or centrally controlled) and all screens, window shades, storm doors and windows, floor coverings, awnings, stoves and water

\*FIRST CHICAGO TRUST COMPANY OF ILLINOIS  
FORMERLY KNOWN AS

*Jim*  
*2700*  
*Mail*

90338219

UNOFFICIAL COPY

Property of Cook County Clerk's Office

03/20/2011

# UNOFFICIAL COPY

heaters, whether now on or in the Premises or hereafter erected, installed or placed on or in the Premises, and whether or not physically attached to the Premises. The foregoing items are and shall be deemed a part of the Premises and a portion of the security for the Liabilities.

Further, Mortgagor does hereby pledge and assign to Mortgagee, all rights and benefits of whatsoever nature derived or to be derived by Mortgagor under or by virtue of the Lease, including without limitation, the right to exercise options, give consents and receive moneys payable to Mortgagor thereunder, all subleases, written or verbal, and all subversions thereunder and all rights and benefits to be derived by Mortgagor thereunder, rents, issues and profits of the Premises, including without limitation, all rents, issues, profits, revenues, royalties, bonuses, rights and benefits due, payable or accruing, and all deposits of money as advance rent or for security, under any and all present and future leases and subleases of the Premises, together with all rights to renew, extend or continue the Lease or purchase the Premises, and the right, but not the obligation, to collect, receive, demand, sue for and recover the same when due or payable. Mortgagee by acceptance of this Mortgage agrees, as a personal covenant applicable to Mortgagor only, and not as a limitation or condition hereof and not available to anyone other than Mortgagor, that until a Default shall occur or an event shall occur, which under the terms hereof shall give to Mortgagee the right to foreclose this Mortgage, Mortgagor may collect, receive and enjoy such avails.

Further, Mortgagor does hereby expressly waive and release all rights and benefits under and by virtue of the Homestead Exemption Laws of the State of Illinois.

Further, Mortgagor covenants and agrees as follows:

1. Mortgagor shall (a) promptly repair, restore or rebuild any buildings or improvements now or hereafter on the Premises which may become damaged or be destroyed; (b) keep the Premises in good condition and repair, without waste, and, except for this Mortgage, free from any encumbrances, security interests, liens, mechanics' liens or claims for lien; (c) pay when due any indebtedness which may be secured by a lien or charge on the Premises, and upon request exhibit satisfactory evidence of the discharge of such lien or charge to Mortgagee; (d) complete within a reasonable time any building or buildings now or at any time in process of construction upon the Premises; (e) comply with all requirements of all laws or municipal ordinances with respect to the Premises and the use of the Premises; (f) make no material alterations in the Premises, except as required by law or municipal ordinance, unless such alterations have been previously approved in writing by Mortgagee; (g) refrain from impairing or diminishing the value of the Premises.

2. Mortgagor shall pay, when due and before any penalty attaches, all general taxes, special taxes, special assessments, water taxes or charges, drainage taxes or charges, sewer service taxes or charges, and other taxes, assessments or charges against the Premises. Mortgagor shall, upon written request, furnish to Mortgagee duplicate paid receipts for such taxes, assessments and charges. To prevent Default hereunder Mortgagor shall pay in full under protest, in the manner provided by statute, any tax, assessment or charge which Mortgagor may

# UNOFFICIAL COPY

desire to contest prior to such tax, assessment or charge becoming delinquent.

3. Upon the request of Mortgagee, Mortgagor shall deliver to Mortgagee the original Lease and all original subleases of all or any portion of the Premises, together with assignments of such subleases from Mortgagor to Mortgagee, which assignments shall be in form and substance satisfactory to Mortgagee; Mortgagor shall not, without Mortgagee's prior written consent, prepay any rent or procure, permit or accept any prepayment, discharge or compromise of any rent or release any subtenant from any obligation, at any time while the indebtedness secured hereby remains unpaid.

4. With respect to the Lease, Mortgagor further covenants and agrees as follows:

- (a) To promptly and faithfully observe, perform and comply with all the terms, covenants, and provisions of the Lease on its part to be observed, performed, and complied with, at the times set forth therein, without any allowance for grace periods, if any;
- (b) To promptly and faithfully observe, perform, and comply with all the terms, covenants and provisions of the Landlord Estoppel and Consent dated June 29, 1990 ("Consent") on its part to be observed, performed and complied with, at the time set forth therein, without any allowance for grace periods, if any;
- (c) Not to do, permit, suffer, or refrain from doing anything, as a result of which there could be a default under or breach of any of the terms of the Lease or Consent;
- (d) Not to cancel, surrender, modify, amend, or in any way alter or permit the alteration of any of the terms of the Lease or Consent;
- (e) To give Mortgagee immediate notice of any default by anyone under the Lease or Consent and to promptly deliver to Mortgagee each notice of default and all other notices, communications, plans, specifications, and other similar instruments received or delivered by Mortgagor in connection therewith;
- (f) To furnish to Mortgagee copies of such information and evidence as Mortgagee may reasonably require concerning Mortgagor's due observance, performance, and compliance with the terms, covenants, and provisions of the Lease and Consent;
- (g) Any default of Mortgagor under the Lease or Consent shall constitute a default under this Mortgage;
- (h) Mortgagor shall give Mortgagee written notice of its intention to exercise each and every option to extend the term of the Lease, at least twenty (20) but not more than sixty (60) days prior to the expiration of the time to exercise such option under the terms thereof.

# UNOFFICIAL COPY

If Mortgagor intends to extend the term of the Lease, it shall deliver to Mortgagee with the notice of such decision, a copy of the notice of extension delivered to the Lessor. If Mortgagor does not intend to extend the term of the Lease, Mortgagee may, at its option, exercise the option to extend in the name and on behalf of Mortgagor. In the event of the filing or commencement of any proceedings for relief under the Bankruptcy Code, as may be amended from time to time, by or against the Lessor or any subsequent lessor under the Lease, Mortgagor shall exercise its option, if any, to continue the Lease. If Mortgagor fails to do so, Mortgagee may, at its option, exercise the option to continue the Lease in the name and on behalf of Mortgagor. In any event, Mortgagor hereby appoints Mortgagee as its attorney-in-fact to execute and deliver, for and in the name of Mortgagor, all instruments and agreements necessary under the Lease or otherwise to cause any extension or continuation of the term thereof. This power, being coupled with an interest, shall be irrevocable as long as the Liabilities remain unpaid;

- (i) If the Lease shall be terminated prior to the natural expiration of its term due to default by Mortgagor or subtenant thereunder, and if, pursuant to any provision of the Lease, Mortgagee shall acquire from the Lessor a new lease of the Premises. Mortgagor shall have no right, title, or interest in or to such new lease or the leasehold estate created thereby, or renewal privileges therein contained;
- (j) Mortgagor agrees that the fee title and the leasehold estate in the property demised by the Lease shall not merge but shall always be kept separate and distinct, notwithstanding the union of said estates in either the Lessor thereunder, Mortgagor or a third party, whether by purchase or otherwise. If Mortgagor acquires the fee title or any other estate, title, or interest in the property demised by the Lease, or any part thereof, the lien of this Mortgage shall attach to, cover, and be a lien upon such acquired estate, title, or interest and same shall thereupon be and become a part of the Premises with the same force and effect as if specifically encumbered by this Mortgage. Mortgagor agrees to execute all instruments and documents that Mortgagee may reasonably require to ratify, confirm, and further evidence Mortgagee's lien on the acquired estate, title, or interest. Furthermore, Mortgagor hereby appoints the Mortgagee its true and lawful attorney-in-fact to execute and deliver all such instruments and documents in the name and on behalf of Mortgagor. This power, being coupled with an interest, shall be irrevocable as long as the Liabilities remain unpaid; and
- (k) Mortgagor shall preserve its title to and interest in the Premises and shall warrant and defend same to Mortgagee against the claims of all persons and parties.

5. Any award of damages resulting from condemnation proceedings, exercise of the power of eminent domain, or the taking of the Premises for public use are hereby transferred, assigned and shall be paid to Mortgagee; and such

90338219



# UNOFFICIAL COPY

awards or any part thereof may be applied by Mortgagee, after the payment of all of Mortgagee's expenses, including costs and attorneys' and paralegals' fees, to the reduction of the indebtedness secured hereby and Mortgagee is hereby authorized, on behalf and in the name of Mortgagor, to execute and deliver valid acquittances and to appeal from any such award.

6. No remedy or right of Mortgagee hereunder shall be exclusive. Each right or remedy of Mortgagee with respect to the Liabilities, this Mortgage or the Premises shall be in addition to every other remedy or right now or hereafter existing at law or in equity. No delay by Mortgagee in exercising, or omitting to exercise, any remedy or right accruing on Default shall impair any such remedy or right, or shall be construed to be a waiver of any such Default, or acquiescence therein, or shall affect any subsequent Default of the same or a different nature. Every such remedy or right may be exercised concurrently or independently, and when and as often as may be deemed expedient by Mortgagee.

7. Mortgagor shall keep the Premises and all buildings and improvements now or hereafter situated on the Premises insured against loss or damage by fire, lightning, windstorm, vandalism and malicious damage and such other hazards as may from time to time be designated by Mortgagee. Mortgagor shall keep all buildings and improvements now or hereafter situated on the Premises insured against loss or damage by flood, if the Premises is located in a flood hazard zone. Each insurance policy shall be for an amount sufficient to pay in full the cost of replacing or repairing the buildings and improvements on the Premises and, in no event less than the principal amount of the Note. Mortgagor shall obtain liability insurance with respect to the Premises in an amount which is acceptable to Mortgagee. All policies shall be issued by companies satisfactory to Mortgagee. Each insurance policy shall be payable, in case of loss or damage, to Mortgagee. Each insurance policy shall contain a standard mortgage clause, in form and substance satisfactory to Mortgagee. Mortgagor shall deliver all insurance policies, including additional and renewal policies, to Mortgagee. In case of insurance about to expire, Mortgagor shall deliver to Mortgagee renewal policies not less than 30 days prior to the respective dates of expiration. Each insurance policy shall not be cancellable by the insurance company without at least 30 days' prior written notice to Mortgagee.

8. Upon Default by Mortgagor hereunder, Mortgagee may, but need not, make any payment or perform any act required of Mortgagor hereunder in any form and manner deemed expedient by Mortgagee, and Mortgagee may, but need not, make full or partial payments of principal or interest on any encumbrances, liens or security interests affecting the Premises and Mortgagee may purchase, discharge, compromise or settle any tax lien or other lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting the Premises or contest any tax or assessment. All moneys paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including attorneys' and paralegals' fees and costs, and any other funds advanced by Mortgagee to protect the Premises or the lien hereof, plus reasonable compensation to Mortgagee for each matter concerning which action herein authorized may be taken, shall be so much additional indebtedness secured hereby and shall become immediately due and payable without notice and with interest thereon at a per annum rate equivalent to the post maturity rate set forth in the Note. Inaction of Mortgagee shall never be considered as a waiver of any right accruing to Mortgagee on account of any Default hereunder on the part of Mortgagor.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

03/24/2011

# UNOFFICIAL COPY

9. If Mortgagee makes any payment authorized by this Mortgage relating to taxes, assessments, charges, liens, security interests or encumbrances, Mortgagee may do so according to any bill, statement or estimate received from the appropriate party claiming such funds without inquiry into the accuracy or validity of such bill, statement or estimate or into the validity of the lien, encumbrance, security interest, tax, assessment, sale, forfeiture, tax lien or title or claim thereof.

10. Upon or after any default by Mortgagor under the Lease or Consent, Mortgagee may (but shall not be obligated to) take any action Mortgagee deems necessary or desirable to prevent or to cure or to attempt to cure any default by Mortgagor in performance of or compliance with any of Mortgagor's covenants or obligations under the Lease or Consent. Upon receipt by Mortgagee from the Lessor under the Lease of any written notice of default by Mortgagor thereunder, Mortgagee may rely thereon and take any action as aforesaid to cure such default even though the existence of such default or the nature thereof be questioned or denied by Mortgagor or by any party on behalf of Mortgagor. Mortgagor hereby expressly grants to Mortgagee, and agrees that Mortgagee shall have, the absolute and immediate right to enter in and upon the Premises or any part thereof to such extent and as often as Mortgagee, in its sole discretion, deems necessary or desirable in order to prevent or to cure or to attempt to cure any such default by Mortgagor. Mortgagee may pay and expend such sums of money as Mortgagee in its sole discretion deems necessary for any such purpose. All such sums so paid and expended by Mortgagee, including attorneys' and paralegals' fees and costs, shall be so much additional indebtedness secured hereby and shall become immediately due and payable without notice and with interest thereon at the per annum rate equivalent to the post maturity rate set forth in the Note. Any payment or action by Mortgagee to prevent, cure or attempt to cure any default by Mortgagor under the Lease or Consent shall not create any liability or obligation of Mortgagee to perform under the Lease or Consent unless Mortgagee acquires the Premises by foreclosure or assignment in lieu of foreclosure.

11. Upon Default and the expiration of any applicable cure period at the sole option of Mortgagee, the Note and/or any other Liabilities shall become immediately due and payable and Mortgagor shall pay all expenses of Mortgagee including attorneys' and paralegals' fees and expenses incurred in connection with this Mortgage and all expenses incurred in the enforcement of Mortgagee's rights in the Premises and other costs incurred in connection with the disposition of the Premises. The term "Default" when used in this Mortgage means any one or more of the events, conditions or acts defined as a "Default" in the Lease and/or the Consent and in the Note, including but not limited to the failure of Debtor to pay the Note or Liabilities in accordance with their terms or failure of Mortgagor or Debtor to comply with or to perform in accordance with any representation, warranty, term, provision, condition, covenant or agreement contained in the Lease, the Consent, this Mortgage, the Note or any instrument, agreement or writing securing any Liabilities. Default under the Lease or Consent or the Note shall be Default under this Mortgage.

12. Notwithstanding any other provisions of this Mortgage, no sale, sublease, mortgage, trust deed, grant by Mortgagor of an encumbrance of any kind, conveyance, transfer of occupancy or possession, contract to sell, or transfer of the Lease or Premises, or any part thereof, or sale or transfer of ownership of any beneficial interest or power of direction in a land trust which is





# UNOFFICIAL COPY

the lessee of the Premises, shall be made without the prior written consent of Mortgagee.

13. "Liabilities" means any and all liabilities, obligations and indebtedness of Mortgagor and/or Debtor to Mortgagee for payment of any and all amounts due under the Note or this Mortgage, and for any other liabilities, indebtedness or obligations of every kind and nature of the Debtor to Mortgagee, whether heretofore, now or hereafter owing or arising, due or payable, howsoever created, arising or evidenced, whether direct or indirect, absolute or contingent, primary or secondary, joint or several, whether existing or arising, through discount, overdraft, purchase, direct loan, by operation of law or otherwise, together with attorneys' and paralegals' fees relating to the Mortgagee's rights, remedies and security interests hereunder, including advising the Mortgagee or drafting any documents for the Mortgagee at any time. Notwithstanding the foregoing, in no event shall the lien of this Mortgage secure outstanding Liabilities in excess of 900% of the original stated principal amount of the Note and this Mortgage.

14. "Prime Rate", means the rate of interest announced or established from time to time by the Mortgagee as its commercial prime rate. The Prime Rate will fluctuate from time to time and the effective date of any change in the Prime Rate shall be the day of such change as announced or established by the Mortgagee with or without notice to anyone. The Mortgagor acknowledges that the Mortgagee makes no representation that the Prime Rate is the lowest or best rate offered by the Mortgagee.

15. When the indebtedness secured hereby shall become due whether by acceleration or otherwise, Mortgagee shall have the right to foreclose the lien of this Mortgage. In any suit to foreclose the lien of this Mortgage, there shall be allowed and included as additional indebtedness in the judgment of foreclosure all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for attorneys' and paralegals' fees, appraisers' fees, outlays for documentary and expert evidence, stenographers' charges, publication costs and costs of procuring all abstracts of title, title searches and examinations, title insurance policies, Torrens certificates, tax and lien searches, and similar data and assurances with respect to title as Mortgagee may deem to be reasonably necessary either to prosecute the foreclosure suit or to evidence to bidders at any foreclosure sale. All of the foregoing items, which may be expended after entry of the foreclosure judgment, may be estimated by Mortgagee. All expenditures and expenses mentioned in this paragraph, when incurred or paid by Mortgagee shall become additional indebtedness secured hereby and shall be immediately due and payable, with interest thereon at a rate equivalent to the post maturity interest rate set forth in the Note. This paragraph shall also apply to any expenditures or expenses incurred or paid by Mortgagee or on behalf of Mortgagee in connection with (a) any proceeding, including without limitation, probate and bankruptcy proceedings, to which Mortgagee shall be a party, either as plaintiff, claimant or defendant, by reason of this Mortgage or any indebtedness secured hereby; or (b) any preparation for the commencement of any suit for the foreclosure of this Mortgage after accrual of the right to foreclose whether or not actually commenced or preparation for the commencement of any suit to collect upon or enforce the provisions of the Lease, and subleases of the Premises, the Note or any instrument which secures the Note after Default, whether or not

90338219

# UNOFFICIAL COPY

actually commenced; or (c) any preparation for the defense of any threatened suit or proceeding which might affect the Premises or the security hereof, whether or not actually commenced.

16. The proceeds of any foreclosure sale 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 the items that are mentioned in the immediately preceding paragraph; second, all other items which under the terms of this Mortgage constitute indebtedness secured by this Mortgage additional to that evidenced by the Note, with interest thereon as herein provided; third, all principal and interest remaining unpaid on the Note and the Liabilities (first to interest and then to principal); fourth, any surplus to Mortgagor or Mortgagor's heirs, legal representatives, successors or assigns, as their rights may appear.

17. Upon, or at any time after the filing of a complaint to foreclose this Mortgage, the court in which such suit is filed may appoint a receiver of the Premises. The receiver's appointment may be made either before or after entry of judgment of foreclosure, without notice, without regard to the solvency or insolvency of Mortgagor at the time of application for the receiver and without regard to the then value of the Premises or whether the Premises shall be then occupied as a homestead or not. Mortgagee may be appointed as the receiver. Such receiver shall have power to collect the rents, issues and profits of the Premises during the pendency of the foreclosure suit and, in case of an entry of judgment of foreclosure, during the full statutory period of redemption, if any, whether there be redemption or not, as well as during any further times when Mortgagor, except for the intervention of the receiver, would be entitled to collect the rents, issues and profits. Such receiver shall also have all other powers which may be necessary or are usual for the protection, possession, control, management and operation of the Premises. The court in which the foreclosure suit is filed may from time to time authorize the receiver to apply the net income in the receiver's hands in payment in whole or in part of the indebtedness secured hereby, or secured by any judgment foreclosing this Mortgage, or any tax, special assessment or other lien or encumbrance which may be or become superior to the lien hereof or of the judgment, and the deficiency judgment against Mortgagor or any guarantor of the Note in case of a forfeiture sale and deficiency.

18. No action for the enforcement of the lien or of any provision of this Mortgage 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.

19. Mortgagee shall have the right to inspect the Premises at all reasonable times and access thereto shall be permitted for that purpose.

20. Mortgagee shall release this Mortgage by a proper release after payment in full of the Note and all Liabilities.

21. This Mortgage and all provisions hereof, shall extend to and be binding upon Mortgagor and all persons or parties claiming by, under or through Mortgagor. The word "Mortgagor" when used herein shall also include all persons or parties liable for the payment of the indebtedness secured hereby or any part



# UNOFFICIAL COPY

thereof, whether or not such persons or parties shall have executed the Note or this Mortgage. Each Mortgagor shall be jointly and severally obligated hereunder. The singular shall include the plural, the plural shall mean the singular and the use of any gender shall be applicable to all genders. The word "Mortgagee" includes the successors and assigns of Mortgagee.

22. Unless otherwise agreed to in writing, Mortgagor covenants and agrees to deposit at the place as Mortgagee may, from time to time, in writing appoint and, in the absence of appointment then at the office of Mortgagee commencing with the first interest payment pursuant to the Note secured hereby, and on each and every interest payment date thereafter until the indebtedness secured by this Mortgage is fully paid, a sum equal to the last total annual taxes and assessments divided by the number of annual interest payments due hereunder. Notwithstanding the foregoing, if the taxes or assessments for the last ascertainable year exclude the buildings and improvements or any part thereof, now constructed or to be constructed on the Premises, then the amount of the deposits to be paid pursuant to this paragraph shall be based upon the reasonable estimate of Mortgagee as to the amount of taxes and assessments which shall be levied or assessed. Concurrent with the initial disbursement of the Note, Mortgagor will also deposit with Mortgagee an amount based upon the taxes and assessments so ascertainable, or so estimated by Mortgagee as the case may be, for taxes and assessments with respect to the Premises on an accrual basis for the period from January 1, immediately following the year for which all taxes and assessments have been fully paid to and including the date of the first installment tax and assessment deposit hereinabove mentioned. The deposits are to be held in trust without allowance of interest 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 of the taxes or assessments (general or special) for any year when the same shall become due and payable, Mortgagor shall, within ten days after receipt of a notice and demand from Mortgagee deposit the additional funds as may be necessary to pay such taxes and assessments (general and special). Any excess shall be applied to subsequent deposits for taxes and assessments.

23. Upon request by Mortgagee, concurrent with and in addition to the deposits for general and special taxes and assessments pursuant to the terms of Paragraph 22 of this Mortgage, Mortgagor will deposit with Mortgagee a sum equal to the premiums that will next become due and payable on any insurance policies required hereunder, divided by the number of annual interest payments due hereunder so that such payments are sufficient to pay the insurance premiums when they become due and payable. All sums deposited hereunder shall be held in trust without interest for the purpose of paying the insurance premiums.

24. MORTGAGOR HEREBY WAIVES ANY AND ALL RIGHTS OF REDEMPTION FROM SALE UNDER ANY ORDER OR JUDGMENT OF FORECLOSURE OF THIS MORTGAGE AND ANY RIGHTS OF REINSTATEMENT PURSUANT TO THE LAWS OF THE STATE OF ILLINOIS REGARDING FORE-

90338219

# UNOFFICIAL COPY

CLOSURE OF MORTGAGES, ON MORTGAGOR'S OWN BEHALF AND ON BEHALF OF EACH AND EVERY PERSON, EXCEPT JUDGMENT CREDITORS OF THE MORTGAGOR, ACQUIRING ANY INTEREST IN OR TITLE TO THE PREMISES AS OF OR SUBSEQUENT TO THE DATE OF THIS MORTGAGE. IN THE EVENT THE PREMISES IS AGRICULTURAL PROPERTY AND MORTGAGOR IS AN ILLINOIS CORPORATION, A FOREIGN CORPORATION LICENSED TO DO BUSINESS IN THE STATE OF ILLINOIS OR A CORPORATE TRUSTEE OF AN EXPRESS TRUST, MORTGAGOR HEREBY WAIVES ANY AND ALL RIGHTS OF REDEMPTION FROM SALE UNDER ANY ORDER OR JUDGMENT OF FORECLOSURE OF THIS MORTGAGE AND ANY RIGHTS OF REINSTATEMENT PURSUANT TO THE LAWS OF THE STATE OF ILLINOIS REGARDING FORECLOSURE OF MORTGAGES, ON MORTGAGOR'S OWN BEHALF AND ON BEHALF OF EACH AND EVERY PERSON, EXCEPT JUDGMENT CREDITORS OF MORTGAGOR, ACQUIRING ANY INTEREST IN OR TITLE TO THE PREMISES, AS OF OR SUBSEQUENT TO THE DATE OF THIS MORTGAGE. IN THE EVENT THE PREMISES IS RESIDENTIAL PROPERTY AS DEFINED UNDER THE LAWS OF THE STATE OF ILLINOIS REGARDING FORECLOSURE OF MORTGAGES, BUT PRIOR TO THE FILING OF A COMPLAINT FOR FORECLOSURE, THE PREMISES CEASES TO QUALIFY AS RESIDENTIAL PROPERTY, MORTGAGOR HEREBY WAIVES ANY AND ALL RIGHTS OF REDEMPTION FROM SALE UNDER ANY ORDER OR JUDGMENT OF FORECLOSURE OF THIS MORTGAGE AND ANY RIGHTS OF REINSTATEMENT PURSUANT TO THE LAWS OF THE STATE OF ILLINOIS REGARDING FORECLOSURE OF MORTGAGES, ON MORTGAGOR'S OWN BEHALF AND ON BEHALF OF EACH AND EVERY PERSON, EXCEPT JUDGMENT CREDITORS OF THE MORTGAGOR, ACQUIRING ANY INTEREST IN OR TITLE TO THE PREMISES AS OF OR SUBSEQUENT TO THE DATE OF THIS MORTGAGE.

25. With respect to the Lease, Mortgagor represents and warrants the following:

- (a) The Lease is in full force and effect, unmodified by any writing or otherwise, except the Consent attached hereto as Exhibit B and made a part hereof;
- (b) All rent, additional rent, and other charges reserved therein have been paid to the extent they are payable to the date hereof;
- (c) Mortgagor enjoys the quiet and peaceful possession of the Premises;
- (d) Mortgagor is not in default under any of the terms of the Lease or Consent and, to the best of its knowledge, there are no circumstances that, with the passage of time or the giving of notice or both, would constitute an event of default thereunder; and
- (e) To the best of Mortgagor's knowledge, the Lessor is not in default under any of the terms or provisions of the Consent or Lease to be observed or performed on the part of the Lessor.

26. Mortgagor additionally represents and warrants the following:

- (a) the Premises and the operations conducted thereon do not violate any applicable federal, state or local law, statute, ordinance, rule, regulation, order or determination of any governmental authority or any



UNOFFICIAL COPY

Property of Cook County Clerk's Office

000000000000

# UNOFFICIAL COPY

restrictive covenant or deed restriction (recorded or otherwise), including without limitation all applicable zoning ordinances and building codes, flood disaster laws and Environmental Laws (defined below);

(b) without limitation of Paragraph (a) above, the Premises and the operations conducted thereon by Mortgagor or any current or prior owner or operator of the Premises are not and were not in violation of or subject to any existing, pending or threatened action, suit, investigation, inquiry or proceeding by any governmental authority or to any remedial obligations under any Environmental Laws;

(c) all notices, permits, licenses or similar authorizations, if any, required to be obtained or filed in connection with the operation or use of the Premises, including without limitation past or present treatment, storage, disposal or release of a hazardous substance or solid waste into the environment, have been duly obtained or filed;

(d) Mortgagor has taken all steps necessary to determine and has determined that no hazardous substances or solid wastes have been disposed of or otherwise released and there has been no threatened release of hazardous substances on or to the Premises except in compliance with Environmental Laws;

(e) Mortgagor has taken all steps necessary to determine that no hazardous substances, hazardous facilities, pollutants or contaminants are located in or on the Premises;

(f) Mortgagor has no material contingent liability in connection with any release or threatened release of any hazardous substance or solid waste into the environment;

(g) there are no underground storage tanks on the Premises or as reasonably can be ascertainable, on property adjacent to or in close proximity to the Premises; and

(h) the use which Mortgagor makes or intends to make of the Premises will not result in the unlawful or unauthorized disposal or other release of any hazardous substance or solid waste on or to the Premises.

The terms "hazardous substance", "release" and "threatened release" have the meanings specified in CERCLA (defined below), and the terms "solid waste" and "disposal" (or "disposed") have the meanings specified in RCRA; provided, however, in the event either CERCLA or RCRA (defined below) is amended so as to broaden the meaning of any term defined thereby, such broader meanings shall apply subsequent to the effective date of such amendment, and provided further that, to the extent the laws of the state in which the Premises are located establish a meaning for "hazardous substance", "release", "solid waste" or "disposal" which is broader than that specified in either CERCLA or RCRA, such broader meaning shall apply with regard to the Premises. The terms "hazardous facilities", "pollutants" or "contaminants" shall have the meanings specified in any applicable local, state or federal statute, ordinance, code or regulation.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

01/20/2011

# UNOFFICIAL COPY

27. Mortgagor shall maintain in full force and effect the Lease, all licenses, bonds, franchises, subleases, patents, contracts and other rights necessary to the profitable conduct of its business, including, without limitation, all notices, permits or licenses, if any, filed or obtained with regard to compliance with Environmental Laws. Mortgagor shall continue in and limit its operations to the same general line or type of business as that presently conducted by it and shall comply with all applicable laws and regulations or all federal, state or local governmental authorities, including, without limitation, all Environmental Laws.

28. Mortgagor shall use Mortgagor's best efforts to cause any and all sublessees or other operators of the Premises and any other Real Property of Mortgagor to conduct their respective businesses so as to comply in all material respects with all Environmental Laws; provided, however, that nothing contained in this Paragraph shall prevent Mortgagor from contesting, in good faith and by appropriate legal proceedings, any such laws, regulation or interpretation or application thereof, provided, further, that Mortgagor shall comply with the order of any court or other governmental body of applicable jurisdiction relating to such Environmental Laws unless Mortgagor shall currently be prosecuting an appeal or proceedings for review and shall have secured a stay of enforcement or execution or other arrangement postponing enforcement or execution pending such appeal or proceedings for review.

29. Mortgagor shall not permit the presence of any hazardous substances, hazardous facilities, pollutants or contaminants, including asbestos on the Premises. If Mortgagee determines at any time that asbestos exists on or in the Premises and may present a health hazard, or if removal of any hazardous substance from the Premises is or may be required by applicable governmental or regulatory authorities or pursuant to applicable laws or regulations, Mortgagee may, in its sole discretion, require the removal or containment of such asbestos or any other hazardous substances at Mortgagor's sole expense.

30. Mortgagor shall use its best efforts to cause all sublessees or other operators of the Premises to dispose of any and all hazardous substances or solid waste generated at the Premises only at facilities and by carriers maintaining compliance with the Environmental Laws. To the best of Mortgagor's knowledge, all such sublessees are operating in compliance with valid permits under RCRA and any other Environmental Law, and shall use its best efforts to obtain certificates of disposal from all contractors employed in connection with the transport or disposal of such hazardous substances or solid waste.

31. At Mortgagee's request, from time to time, Mortgagor shall establish and maintain, at its sole expense, a system to assure and monitor continued compliance with the Environmental Laws by any and all lessees and operators of the Premises. That system shall include, annual reviews of such compliance by employees or agents of Mortgagor who are familiar with the requirements of the Environmental Laws. At the request of Mortgagee, no more than once each year, Mortgagee shall be entitled to have made a detailed review of Mortgagor's environmental law compliance (the "Environmental Report") by an environmental consulting firm acceptable to the Mortgagee; provided, however, that if any Environmental Report indicates any violation of Environmental Laws, such system shall include, at the request of Mortgagee within three (3) months of the date of

# UNOFFICIAL COPY

such Environmental Report, a detailed review of the status of such violation (a "Supplemental Report") by such environmental consultant. Mortgagor shall provide Mortgagee with notice of the enactment or promulgation of any Environmental Law which may result in a material adverse change in the business, financial condition, or operations of Mortgagor within fifteen (15) days after Mortgagor obtains knowledge thereof.

32. In Mortgagee's sole discretion, Mortgagee, or any person designated by Mortgagee, shall have the right but not the duty or obligation, from time to time hereafter, to inspect Mortgagor's Premises or place or places of business (or any other place where the collateral or any information relating thereto is kept or located) during reasonable business hours, without hindrance or delay, to:

(a) verify such matters concerning the Premises as Mortgagee may consider reasonable under the circumstances; and

(b) take soil borings of the Premises and conduct any other tests or procedures at Mortgagor's expense and inspect any books, records, journals, orders, receipts, correspondence, notices, permits or licenses, with regard to compliance with Environmental Laws, and to determine at the Mortgagor's expense whether any hazardous substances are present on the Premises.

Mortgagor will deliver to Mortgagee, within ten (10) days of request therefor, any instruments necessary to obtain records from any person maintaining such records. Mortgagor shall pay on demand or within ten (10) days thereafter all costs and expenses incurred by Mortgagee in acquiring information pursuant to this section with interest thereon at a per annum rate equivalent to the post maturity rate set forth in the Note. All expenditures incurred pursuant to the powers herein contained shall become a part of the Liabilities secured hereby. Mortgagee shall not be liable to account to Mortgagor for any action taken pursuant thereto.

33. Mortgagor shall indemnify and hold harmless Mortgagee, its participants, affiliates, parent and/or holding company, if any, and Mortgagee's officers, directors, employees or any of them from any and all loss, damage, claims or causes of action of every kind or nature together with all attorneys' fees, paralegals' fees and other costs and expenses incurred by Mortgagee arising out of or connected with any of the following: (a) any suggestion that the Premises or any other property of Mortgagor has contributed to, caused or become an environmental risk, hazard or pollutant or the suggestion that any hazardous substance, solid waste, hazardous facilities, pollutants, contaminants or petroleum derivatives or the release, threatened release or disposal of any hazardous substance, solid waste, hazardous facilities, pollutants, contaminants, or petroleum derivatives exists on the Premises or any other property owned by Mortgagor; (b) any failure to comply with or violation or threatened violation of any Environmental Laws; (c) failure to comply with or violation of the Illinois Responsible Property Transfer Act; or (d) any failure to comply with any environmental representation or warranty contained herein or the making of any false environmental representation or warranty contained herein. Any such amounts shall be due and payable to Mortgagee from Mortgagor on demand. Until such amounts are paid to Mortgagee by Mortgagor, those amounts shall become additional indebtedness secured hereby and shall become immediately due and payable without notice and with interest thereon at a per annum rate equivalent to the post maturity rate set forth in the Note. The provisions of this paragraph

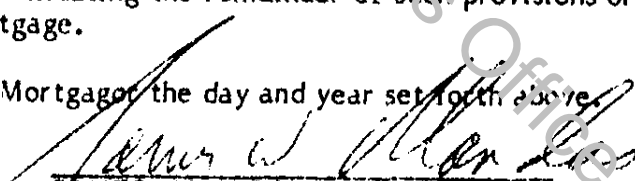
# UNOFFICIAL COPY

shall be in addition to any and all other obligations and Liabilities Mortgagor may have to Mortgagee under the Note, this Mortgage, any loan document, and in common law, and shall survive (1) the repayment of all Liabilities; (2) the satisfaction of all of the other obligations of Mortgagor contained in this Mortgage and under any loan document; (3) the discharge of Mortgage, and (4) the foreclosure of this Mortgage, the sale of the Premises whether purchased by Mortgagee or otherwise or acceptance of a deed in lieu of foreclosure.

34. As used herein, CERCLA means the Comprehensive, Environmental, Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601 et seq. As used herein, Environmental Laws means any and all laws, statutes, ordinances, rules, regulations, orders, or determinations of any federal or state governmental authority or courts pertaining to health or the environment in effect at any time in any and all jurisdictions in which Mortgagor is or at any time may be doing business, or where the Premises are located, including without limitation, the Clean Air Act, as amended, 42 U.S.C. Section 7401 et seq., the Comprehensive, Environmental, Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601 et seq., (CERCLA), the Federal Water Pollution Control Act Amendments, 33 U.S.C. Section 1251 et seq., the Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. Section 651 et seq., the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. Section 6901 et seq., (RCRA), the Safe Drinking Water Act, as amended, 42 U.S.C. Section 300(f) et seq., the Toxic Substances Control Act, as amended, 5 U.S.C. Section 2601 et seq., the Illinois Environmental Protection Act, as amended, Ill. Rev. Stat., ch. 111½, par. 1021 et seq. (1987) and the Illinois Responsible Property Transfer Act, as amended, Ill. Rev. Stat., ch. 30, par. 901 et seq. As used herein, RCRA means the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. Section 6901 et seq.

35. This Mortgage has been made, executed and delivered to Mortgagee in Des Plaines, Illinois and shall be construed in accordance with the laws of the State of Illinois. Wherever possible, each provision of this Mortgage shall be interpreted in such manner as to be effective and valid under applicable law. If any provisions of this Mortgage are prohibited by or determined to be invalid under applicable law, such provisions shall be ineffective to the extent of such prohibitions or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Mortgage.

WITNESS the hand and seal of Mortgagor the day and year set forth above.

  
JAMES MANDAS

This document was prepared by  
and after recording should be mailed to:

Paul J. Richter  
DeHaan & Richter, P.C.  
55 West Monroe Street  
Suite 1000  
Chicago, Illinois 60603  
(312) 726-2660

MAIL TO:



UNOFFICIAL COPY

Property of Cook County Clerk's Office

01/25/2008

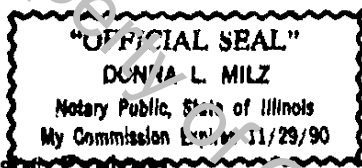
# UNOFFICIAL COPY

STATE OF ILLINOIS

COUNTY OF Cook

I, the undersigned, a Notary Public in and for said County and State aforesaid, do hereby certify that James W. Mendez, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged to me that he signed and delivered the said instrument as his/her own free and voluntary acts, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 5<sup>th</sup> day of July, 1990.



Donna L. Milz  
NOTARY PUBLIC

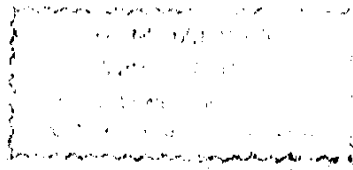
My Commission Expires: \_\_\_\_\_

Cook County Clerk's Office

30338219

UNOFFICIAL COPY

Property of Cook County Clerk's Office



015822201

# UNOFFICIAL COPY

## EXHIBIT A

LOT 1 IN MANDAS RESUBDIVISION OF LOTS 9, 10, 12, 13 AND 14 IN BLOCK 16 IN ARTHUR T. MCINTOSH AND CO.'S ADDITION TO DES PLAINES HEIGHTS, BEING A SUBDIVISION OF THAT PART EAST OF RAILROAD OF THE SOUTH 1/2 OF THE SOUTHEAST 1/4 OF SECTION 20, TOWNSHIP 41 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, AND OF THAT PART WEST OF DES PLAINES ROAD OF THE SOUTH 1/2 OF THE SOUTHWEST 1/4 (EXCEPT 4 ACRES IN THE NORTHEAST CORNER THEREOF) OF SECTION 21, TOWNSHIP 41 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COCK COUNTY, ILLINOIS.

Common Address:

1414 Oakton Street  
Des Plaines, Illinois 60016

P.I.N. 09-20-417-039

90338219