

This document is being re-recorded to correct a typographical error contained in the legal description attached as Exhibit A by changing the reference in the third line of the legal description to the correct reference of Block 59.

7270156 63 SR 2of5

WHEREAS, the principal amount of the indebtedness evidenced by the Notes, together with and including interest thereon, and any extensions and renewals thereof, in whole or in part, any and all other sums which may be at any time due or owing or required to be paid as provided herein or in the Notes, and all other Obligations (as defined in the Loan Agreement) of the Mortgagor to the Mortgagee are collectively herein called the "Indebtedness Hereby Secured";

WHEREAS, the Mortgagor has, concurrently herewith, entered into a Loan and Security Agreement with the Mortgagee of even date herewith (the "Loan Agreement") pursuant to which the Mortgagee is lending to the Mortgagor (a) up to Two Million Two Hundred Fifty Thousand Dollars (\$2,250,000.00) on a revolving credit basis under a Revolving Credit Facility, evidenced by the Mortgagor's Promissory Note of even date herewith in said principal face amount that matures on September 17, 1991 unless extended or renewed (the "Term Note"), (b) the sum of Six Hundred Forty Thousand Dollars (\$640,000.00) under Installment Credit Facility B, evidenced by the Mortgagor's Installment Note of even date herewith that is payable in monthly installments as provided therein and that has a stated maturity date of September 1, 1993 ("Installment Note B"), and (c) the sum of One Million Three Hundred Sixty Thousand Dollars (\$1,360,000.00) under Installment Credit Facility C, evidenced by the Mortgagor's Installment Note of even date herewith that is payable in monthly installments as provided therein and that has a stated maturity date of September 1, 1993 of such notes accruing and becoming payable as provided therein (the Term Note, Installment Note B and Installment Note C, as such notes may be extended, renewed, modified or amended, and any replacement or substitution notes therefor, being collectively hereinafter referred to as the "Notes"), which Notes are to be secured by the Collateral referred to therein and in the Loan Agreement and copies of which Notes are attached hereto as Exhibits B, C and D; and

WITNESSETH:

THIS MORTGAGE, dated as of September 17, 1990 with respect to the real estate (the "Real Estate") described on Exhibit A attached hereto and made a part hereof, is made by E.W. KNEIP COMPANY, an Illinois corporation (herein called the "Mortgagor"), whose address is 527 South Jefferson Street, Chicago, Illinois 60607, in favor of BANK ONE, MILWAUKEE, N.A. (herein, together with its successors and assigns, including each and every holder from time to time of the Notes hereinafter referred to, called the "Mortgagee"), whose address is 111 East Wisconsin Avenue, Milwaukee, Wisconsin 53202.

91447983 90451137

48 9/05/90

91447983 90451137 1990 SEP 17 PM 3:06 COOK COUNTY, ILLINOIS FILED FOR RECORD

1

NOW, THEREFORE, to secure the payment of the indebtedness hereby secured and the performance and observance of all the covenants, provisions and agreements provided herein and in the Loan Agreement, and in consideration of the premises and Ten Dollars (\$10.00) in hand paid by the Mortgagee to the Mortgagee, and for other good and valuable considerations, the receipt and sufficiency of all of which are hereby acknowledged by the Mortgagee, the Mortgagee does hereby, as to the Real Estate, ASSIGN, GRANT, RELEASE, REMISE, WARRANT, ALIEN, MORTGAGE and INTEREST unto the Mortgagee (and GRANTS A CONTINUING SECURITY INTEREST unto the Mortgagee with respect to) all and sundry rights, interests and property hereinafter described (all herein together called the "Premises"):

- (a) The Real Estate;
- (b) All buildings, structures and other improvements now or at any time hereafter constructed or erected upon or located at the Real Estate, together with and including, but not limited to, all fixtures, equipment, machinery, appliances and other articles and attachments now or hereafter forming part of, attached to or incorporated in any such buildings, structures or improvements (all herein generally called the "Improvements");
- (c) All privileges, reservations, allowances, hereditaments, tenements and appurtenances now or hereafter belonging or pertaining to the Real Estate or Improvements;
- (d) All leasehold estates, right, title and interest of the Mortgagee in any and all leases, subleases, arrangements or agreements relating to the use and occupancy of the Real Estate and improvements or any portion thereof, now or hereafter existing or entered into (all herein generally called "Leases"), together with all cash or security deposits, advance rentals and other deposits or payments of similar nature given in connection with any Leases;
- (e) All rents, issues, profits, royalties, income, avails and other benefits now or hereafter derived from the Real Estate and improvements, under leases or otherwise (all herein generally called "Rents"), subject to the right, power and authority given to the Mortgagee in the Assignment of Rents hereinafter referred to, to collect and apply the Rents;

91447983 90451137

90451137

91447983

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

(v) all easements, rights-of-way and rights used in connection with the Real Estate or Improvements or as a means of access thereto, and (v) all water rights.

(h) all right, title and interest of Mortgagor now owned or hereafter acquired in and to (i) any land or vaults lying within the right-of-way of any street or alley, open or proposed, adjoining the Real Estate; (ii) any and all alleys, sidewalks, strips and gores of land adjacent to or use in connection with the Real Estate and Improvements; (iii) any and all rights and interests of every name or nature forming part of or used in connection with the Real Estate and/or the operation and maintenance of the Improvements; (iv) all easements, rights-of-way and rights used in connection with the Real Estate or Improvements or as a means of access thereto, and (v) all water rights.

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

(f) Any interest, estates or other claims, both in law and in equity, which Mortgagor now has or may hereafter acquire in the Real Estate and Improvements or other rights, interests or properties comprising the Premises now owned or hereafter acquired;

UNOFFICIAL COPY

Property of Cook County Clerk's Office

50451137

91447983

(c) pay, when due, any indebtedness which may be secured by a lien or charge on the Premises on a parity with or superior to the lien hereof, and

(b) keep the Premises in good condition and repair, without waste, and free from mechanics', materialmen's or like liens or claims or other liens or claims for lien not expressly subordinated to the lien hereof;

(a) promptly repair, restore or rebuild any improvements now or hereafter existing on the Premises which may become damaged or be destroyed, whether or not proceeds of insurance are available or sufficient for the purpose;

2. Maintenance, Repair, Restoration and Superior Liens. The Mortgagor will:

1. Payment of Indebtedness Hereby Secured. The Mortgagor will duly and promptly pay each and every installment of the principal of and interest and premium, if any, on the Notes, and all other indebtedness hereby secured as the same become due, and will duly perform and observe all of the covenants, agreements and provisions provided herein, in the Loan Agreement, the Assignment of Rents or the Notes.

AND IT IS FURTHER AGREED THAT:

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

(b) Performance and observance by the Mortgagor of all of the terms, provisions, covenants and agreements on Mortgagor's part to be performed and observed hereunder, under the Loan Agreement and under the Assignment of Rents of even date herewith (the "Assignment" or the "Assignment of Rents").

(a) Payment of the indebtedness, with interest thereon, evidenced by the Notes and any and all modifications, extensions and renewals thereof, and all other indebtedness hereby secured;

FOR THE PURPOSE OF SECURING:

UNOFFICIAL COPY

9 1 4 7 9

3. Taxes. The mortgagor will pay when due and before any penalty attaches, all general and special taxes, assessments, water charges, sewer charges, and other fees, taxes, charges and assessments of every kind and nature whatsoever (all herein generally called "Taxes"), whether or not assessed against the mortgagor, if applicable to the premises or any interest therein, or the indebtedness hereby secured, or any obligation or agreement secured hereby; and the mortgagor will, upon written request, furnish to the mortgagee duplicate receipts therefor; provided that the mortgagor may contest the amount or propriety of any taxes in accordance with the provisions of Section 25 hereof; provided that nothing in this section contained shall require the mortgagor to pay any income, franchise or excise tax imposed upon the mortgagee, excepting only such which may be levied against such income expressly as and for a specific substitute for taxes on the premises, and then only in an amount computed as if the mortgagee derived no income from any source other than its interest hereunder.

- (d) complete, within a reasonable time, any improvements now or at any time in the process of erection upon the premises;
- (e) comply with all requirements of law, municipal ordinances or restrictions and covenants of record with respect to the premises and the use thereof; make no material alterations in the premises, except as required by law or municipal ordinance;
- (f) suffer or permit no change in the general nature of the occupancy of the premises without the mortgagee's prior written consent;
- (g) initiate or acquiesce in no zoning reclassification with respect to the premises, without the mortgagee's prior written consent; and not reduce, build upon, obstruct, redesignate or relocate any sidewalks, aisles, streets, paved areas or rights-of-way or lease or grant any rights to use the same to any other person except tenants and invitees of tenants of the premises without the prior written consent of the mortgagor.

91447983

50451137

9 1 4 7 9

90451137

91447983

4. Insurance Coverage. The mortgagor will insure and keep insured the premises and each and every part and parcel thereof against such perils and hazards as the mortgagee may from time to time require, and in any event including:

(a) Insurance against loss to improvements caused by fire, lightning and risks covered by the so-called "all perils" endorsement and such other risks as the mortgagee may reasonably require, in amounts: (i) greater than or equal to the aggregate principal amount of the Notes up to the approximate current market value of the premises as of this date, and (ii) sufficient to satisfy any coinsurance limitations imposed by the casualty insurer;

(b) Comprehensive general public liability insurance against bodily injury and property damage in any way arising in connection with the premises with such limits as the mortgagee may reasonably require and in any event not less than \$2,000,000.00 single limit coverage;

(c) Business interruption insurance in amounts sufficient to pay during any period of up to one (1) year in which the improvements may be damaged or destroyed: (i) all rents derived from the premises and (ii) all taxes, assessments, utility charges and insurance premiums) required herein to be paid by the mortgagor or by tenants of the premises;

(d) Broad form boiler and machinery insurance on all equipment and objects customarily covered by such insurance (if any thereof are located at the premises), providing for full repair and replacement cost coverage, and other insurance of the types and in amounts as the mortgagee may reasonably require, but in any event not less than that customarily carried by persons owning or operating like properties;

(e) During the making of any alterations or improvements to the premises (i) insurance covering claims based on the owner's contingent liability not covered by the insurance provided in subsection (b) above and (ii) Worker's Compensation insurance covering all persons engaged in making such alterations or improvements.

Office

30451137

91447983

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

(a) be in form, with companies and in amounts reasonably satisfactory to Mortgagee, and all policies of casualty insurance shall have attached thereto mortgage clauses or endorsements in favor of and with loss payable to the Mortgagee;

(b) contain endorsements that no act or negligence of the insured or any occupant and no occupancy or use of the Premises for purposes more hazardous than permitted by the terms of the policies will affect the validity or enforceability of such policies as against the Mortgagee;

(c) be written in amounts sufficient to prevent Mortgagee from becoming a co-insurer; and

(d) provide for thirty (30) days prior written notice of cancellation to the Mortgagee;

and the Mortgagee will deliver its policies, together with the required endorsements, including additional and renewal policies, to the Mortgagee, and in case of insurance policies about to expire, the Mortgagee will deliver its renewal policies not less than thirty (30) days prior to the respective dates of expiration, together with copies of receipts evidencing payment of premiums.

6. Proceeds of Insurance. The Mortgagee will give the Mortgagee prompt notice of any damage to or destruction of the Premises, and

(a) In case of damage to or destruction of the Premises, or any part thereof, covered by policies of insurance (herein called "Insured Casualty"),

the Mortgagee (or, after entry of decree of foreclosure, the purchaser at the foreclosure sale or decree creditor, as the case may be) is hereby authorized at its option (i) to settle and adjust any claim under such policies without the consent of the Mortgagee, or (ii) allow the Mortgagee to adjust the loss; provided that, in any case, the Mortgagee shall, and is hereby authorized to, collect and receipt for any such insurance proceeds, and the expenses incurred by the Mortgagee in the adjustment and collection of insurance proceeds shall be so much additional indebtedness Hereby Secured, and shall be reimbursed to the Mortgagee upon demand;

90451137

91447983

- (b) In the event of any such Insured Casualty, the Mortgagee may, in its sole discretion, (i) accelerate and declare that portion of the indebtedness Hereby Secured equal to the resultant proceeds of insurance to be immediately due and payable, or if such Insured Casualty concerns a material or substantial portion of the Premises, declare the entire balance of the indebtedness Hereby Secured to be immediately due and payable, and apply all such proceeds against such accelerated portion of the indebtedness Hereby Secured, or (ii) apply the proceeds of insurance to reimburse the Mortgagee for the cost of restoring, repairing, replacing or rebuilding (herein generally called "Restoring") the Premises, or any part thereof subject to Insured Casualty, as provided for in Section 8 hereof;
- (c) The Mortgagee may apply the proceeds of insurance consequent upon any Insured Casualty upon the indebtedness Hereby Secured, in such order or manner as the Mortgagee may elect; provided that no premium or penalty shall be payable in connection with any prepayment of the indebtedness Hereby Secured made out of insurance proceeds as aforesaid;
- (d) In the event that proceeds of insurance, if any, shall be made available to the Mortgagee for the restoring of the Premises, the Mortgagee hereby covenants to restore the same to at least equal value and substantially the same character as prior to such damage or destruction; all to be effected in accordance with plans and specifications to be first submitted to and approved by the Mortgagee;
- (e) Any portion of the insurance proceeds remaining after payment in full of the indebtedness Hereby Secured shall be paid to the Mortgagee unless otherwise ordered by a court of competent jurisdiction; and
- (f) No interest shall be payable by the Mortgagee on account of any insurance proceeds at any time held by the Mortgagee.
7. Condemnation. The Mortgagee will give the Mortgagee prompt notice of any proceedings, instituted or threatened, seeking condemnation or taking by eminent domain or any like process (herein generally called a "Taking"), of all or any part of the Premises, including damages to grade; and:

Office

90451137

91447983

- (a) The Mortgagor agrees that it shall not settle, compromise or adjust any claim for an Award without the prior written consent of the Mortgagor;
- (b) The Mortgagor hereby assigns, transfers and sets over unto the Mortgagee the entire proceeds of any Award consequent upon any Taking;
- (c) The Mortgagee may in its sole discretion, (i) declare that portion of the indebtedness hereby secured equal to the Award to be immediately due and payable, or if the Taking concerns a material or substantial portion of the Premises, declare the entire balance of the Indebtedness hereby secured to be immediately due and payable, and apply all such Awards to such accelerated portion of the Indebtedness hereby secured, or (ii) apply such funds to reimburse Mortgagor for the cost of restoring the portion of the Premises remaining after such Taking, as provided for in Section 8 hereof;
- (d) The Mortgagee may apply any Award (including the amount not applied for the restoring effected in accordance with subsection (c) above) upon the Indebtedness hereby secured in such order or manner as the Mortgagee may elect; provided that no premium or penalty shall be payable in connection with any repayment of the Indebtedness hereby secured made out of any Award as aforesaid;
- (e) In the event that any Award shall be made available to the Mortgagor for restoring the portion of the Premises remaining after a Taking, the Mortgagor hereby covenants to restore the remaining portion of the Premises to at least equal value and substantially the same character as prior to such Taking, all to be effected in accordance with plans and specifications to be first submitted to and approved by the Mortgagee;
- (f) Any portion of any Award remaining after payment in full of the Indebtedness hereby secured shall be paid to the Mortgagor unless otherwise ordered by a court of competent jurisdiction; and
- (g) No interest shall be payable by the Mortgagee on account of any Award at any time held by the Mortgagee.

Office

90451137

91447983

11. Effect of Extensions of Time, Amendments on Junior Liens and Others. If the payment of the Indebtedness Hereby Secured, or any part thereof, be extended or varied, or if any part of the security be released, all persons now or at any time hereafter liable therefor, or interested in the Premises, shall be held to assent to such extension, variation or release, and their liability, if any, and the Lien, and all provisions hereof, shall continue in full force and effect; the right of recourse against all such persons being expressly reserved by the Mortgagee, notwithstanding any such extension, variation or release. Any person, firm or corporation taking a Junior

10. Prepayment Privilege. At such time as the Mortgagee is not in default under the terms of the Loan Agreement, the Notes, Assignment of Rents or this Mortgage, the Mortgagee shall have the privilege of making prepayments on the principal of the Notes (in addition to the required payments thereunder) in accordance with the terms and subject to the conditions set forth in the Loan Agreement and the Notes, but not otherwise.

9. Stamp Tax. If, by the laws of the United States of America, or of any state having jurisdiction over the Mortgagee, any tax is due or becomes due in respect of the issuance of the Notes, the Mortgagee shall pay such tax on the Notes in the manner required by such law.

8. Disbursement of Insurance Proceeds and Condemnation Awards. In the event the Mortgagee receives a reimbursement out of insurance proceeds or any Award held by the Mortgagee, such proceeds shall be disbursed from time to time upon the Mortgagee being furnished with satisfactory evidence of the estimated cost of completion of the Restoring, with funds (or assurances satisfactory to the Mortgagee that such funds are available) sufficient in addition to the proceeds of insurance or Award to complete the proposed Restoring, and with such architect's certificates, waivers of Lien, contractor's sworn statements and such other evidences of cost and of payment as the Mortgagee may reasonably require and approve; and the Mortgagee may, in any event, require that all plans and specifications for such Restoring be submitted to and approved by the Mortgagee prior to commencement of work. No payment made prior to the final completion of the Restoring shall exceed ninety percent (90%) of the value of the work performed from time to time; funds other than proceeds of insurance or the Award shall be disbursed prior to disbursement of such proceeds; and at all times the undisbursed balance of such proceeds remaining in the hands of the Mortgagee, together with funds deposited for the purpose or irrevocably committed to the satisfaction of the Mortgagee by or on behalf of the Mortgagee for the purpose, shall be at least sufficient in the reasonable judgment of the Mortgagee to pay for the cost of completion of the Restoring, free and clear of all liens or claims for Lien.

91447983 80451137

13. Mortgagee's performance of Mortgagor's obligations. In case of default therein, the Mortgagee hereby Secured or the acceleration of the lien hereof and during the period of redemption, it may, but shall not be required to, make any payment or perform any act herein or hereinafter referred to, which is required of the Mortgagor in any form and manner deemed expedient to the Mortgagee; and the Mortgagee may, but shall not be required to, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting the Premises, or contest any tax or assessment, and may, but shall not be required to, complete construction,

12. Effect of Changes in Tax Laws. In the event of the enactment after the date hereof by any legislative authority having jurisdiction of the Premises of any law deducting from the value of land for the purposes of taxation, any lien thereon, or imposing upon the Mortgagee the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by the Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or the Mortgagee's interest in the Premises, or the method of collecting taxes, so as to affect this Mortgage or the indebtedness hereby Secured, or the holder thereof, then, and in any such event, the Mortgagor, upon demand by the Mortgagee, shall pay such taxes or assessments or reimburse the Mortgagee therefor; provided that it in the opinion of counsel for the Mortgagee the payment by Mortgagor of any such taxes or assessments shall be unlawful, then the Mortgagee may, by notice to the Mortgagor, declare the entire principal balance of the indebtedness hereby Secured to be due and payable on a date specified in such notice not less than forty-five (45) days after the date of such notice, and the indebtedness hereby Secured shall then be due and payable without premium or penalty on the date so specified in such notice.

mortgage or other lien upon the Premises or any interest therein, shall take the said lien subject to the rights of the Mortgagee herein to amend, modify and supplement this Mortgage, the Notes and the Assignment of Rents, and to vary the rate of interest and the method of computing the same, and to impose additional fees and other charges, and to extend the maturity of the Indebtedness hereby Secured, in each and every case without obtaining the consent of the holder of such junior lien and without the lien of this Mortgage losing its priority over the rights of any such junior lien. Nothing in this Section contained shall be construed as waiving any provision of Section 15 hereof which provides, inter alia, that it shall constitute an Event of Default if the Premises be sold, conveyed or encumbered without the consent of the Mortgagee.

15. Restrictions on Transfer. It shall be an immediate Event of Default and default hereunder if, without the prior written consent of the Mortgagee, the Mortgagor shall create, effect, contract for, commit to or consent to or shall suffer or permit any conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation of the Premises or any part thereof, or interest therein, whether any such above conveyance, sale, assignment, transfer, lien,

14. Inspection of Premises. The Mortgagee shall have the right to inspect the Premises at all reasonable times, and access thereto shall be permitted for that purpose upon reasonable notice to the Mortgagor and provided such inspection does not unreasonably interfere with the operation of the Mortgagor's business.

13. The Mortgagor shall, at its expense, maintain and keep in good repair and order the Premises and the equipment and furnishings and shall pay the operating costs and expenses thereof, including the cost of fuel, oil, gas, electricity, water, sewer, telephone, and other utilities, and shall be responsible for the maintenance and repair of the Premises and the equipment and furnishings. The Mortgagor shall also be responsible for the maintenance and repair of the Premises and the equipment and furnishings and shall pay the operating costs and expenses thereof, including the cost of fuel, oil, gas, electricity, water, sewer, telephone, and other utilities, and shall be responsible for the maintenance and repair of the Premises and the equipment and furnishings. The Mortgagor shall also be responsible for the maintenance and repair of the Premises and the equipment and furnishings and shall pay the operating costs and expenses thereof, including the cost of fuel, oil, gas, electricity, water, sewer, telephone, and other utilities, and shall be responsible for the maintenance and repair of the Premises and the equipment and furnishings.

90451137

91447983

UNOFFICIAL COPY

Property of Cook County Clerk's Office

(f) If the Premises shall be abandoned;

(e) If default shall continue for fifteen (15) days after notice thereof by the Mortgagee to the Mortgagor in the due and punctual performance or observance of any agreement or condition herein provided (other than those set forth above); or

(d) If default is made in the maintenance and delivery to the Mortgagee of insurance required to be maintained and delivered hereunder, without notice or grace of any kind; or

(c) If an Event of Default pursuant to sections 15 or 34 hereof shall occur and be continuing without notice or period of grace of any kind; or

(b) If an Event of Default shall occur under the Loan Agreement, the Notes, the Assignment of Rents or any other documents evidencing or securing the indebtedness Hereby Secured (collectively, the "Loan Documents") and be continuing without cure or waiver by the Mortgagee; or

(a) If default is made in the due and punctual payment of the Notes or any installment thereof, either principal or interest, as and when the same is due and payable;

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

pledge, mortgage, security interest, encumbrance or alienation is effected directly, indirectly, voluntarily or involuntarily, by operation of law or otherwise; provided that the foregoing provisions of this Section 15 shall not apply (i) to liens securing the Indebtedness Hereby Secured, (ii) to the lien of current taxes and assessments not in default, or (iii) the mortgage lien in favor of Swift-Eckrich, Inc. ("Swift") to the extent it secures the note or other obligation in favor of Swift referred to in the Loan Agreement and any other Subordinated Debt (as defined in the Loan Agreement) owing thereto. The Mortgagee may condition its consent upon such increase in rate of interest payable upon the Indebtedness Hereby Secured, change in monthly payments thereon, change in maturity thereof and/or the payment of a fee, all as the Mortgagee may in its sole discretion require. The provisions of this Section 15 shall be operative with respect to and shall be binding upon any persons who, in accordance with the terms hereof or otherwise, shall subsequently acquire any part of or interest in or encumbrance upon the Premises, or any beneficial interest therein.

91447983

90451137

91447983 90451137

then the mortgagee is hereby authorized and empowered at its option, and without affecting the lien hereby created or the priority of said lien or any right of the mortgagee hereunder, to declare, without further notice all indebtedness hereby secured to be immediately due and payable, whether or not such default is thereafter remedied by the mortgagor, and the mortgagee may immediately proceed to foreclose this mortgage and/or exercise any right, power or remedy provided by this mortgage, the Notes, the Assignment of Rents or any other loan documents or by law or in equity conferred.

17. Foreclosure. When the Indebtedness Hereby Secured, or any part thereof, shall become due, whether by acceleration or otherwise, the mortgagee shall have the right to foreclose the lien hereof for such indebtedness or part thereof. In any suit or proceeding to foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the decree for sale, all expenditures and expenses which may be paid or incurred by or on behalf of the mortgagee for attorneys' fees, appraisers' fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to title, as the mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at sales which may be had pursuant to such decree, the true conditions of the title to or the value of the premises. All expenditures and expenses of the nature in this section mentioned, and such expenses and fees as may be incurred in the protection of the premises and the maintenance of the lien of this mortgage, including the fees of any attorney employed by the mortgagee in any litigation or proceedings affecting this mortgage, the Notes or the premises, including probate and bankruptcy proceedings, or in preparation for the commencement or defense of any proceeding or threatened suit or proceeding, shall be immediately due and payable by the mortgagor, with interest thereon at the Default Rate.

18. Proceeds of Foreclosure Sale. The proceeds of any foreclosure sale of the premises shall be distributed and applied in the following order of priority: First, on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in Section 17 hereof; Second, all other items which, under the terms hereof, constitute Indebtedness Hereby Secured additional to that evidenced by the Notes, with interest on such items as herein provided; Third, to the principal remaining unpaid upon the Notes; and lastly, any surplus to the mortgagor, and its successors or assigns, as their rights may appear.

90451137

91447983

20. Insurance Upon Foreclosure. In case of an insured loss after foreclosure proceedings have been instituted, the proceeds of any insurance policy or policies, if not applied in restoring the improvements, as aforesaid, shall be used to pay the amount due in accordance with any decree of foreclosure that may be entered in any such proceedings, and the balance, if any, shall be paid as the court may direct. In the case of foreclosure of this mortgage, the court, in its decree, may provide that the mortgagee's clause attached to each of the casualty insurance policies may be canceled and that the decree creditor may cause a new loss clause to be attached to each of said casualty insurance policies making the loss thereunder payable to said decree creditors; and any such foreclosure decree may further provide that in case of one or more redemptions under said decree, pursuant to the statutes in each such case made and provided, then in every such case, each and every successive redeemer may cause the preceding loss clause attached to each casualty insurance policy to be canceled and a new loss clause to be attached thereto, making the loss thereunder payable to such redeemer. In the event of foreclosure sale, the mortgagee is

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

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

19. Receiver. Upon, or at any time after, the filing of a complaint to foreclose this mortgage, the court in which such complaint is filed may appoint a receiver of the premises. Such appointment may be made either before or after sale, without notice, without regard to solvency or insolvency of the mortgagor at the time of application for such receiver, and without regard to the value of the premises or whether the same shall be then occupied as a homestead or not; and the mortgagee hereunder or any holder of the Notes may be appointed as such receiver. Such receiver shall have the power to collect the rents, issues and profits of the premises during the pendency of such foreclosure suit and, in the case of a sale and a deficiency, during the full statutory period of redemption, if any, whether there be a redemption or not, as well as during any further times when the mortgagor, except for the intervention of such receiver, would be entitled to collection of such rents, issues and profits, and all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the premises during the whole of said period. The court may, from time to time, authorize the receiver to apply the net income from the premises in his hands in payment in whole or in part of:

hereby authorized, without the consent of the mortgagor, to assign any and all insurance policies to the purchaser at the sale, or to take such other steps as the mortgagee may deem advisable to cause the interest of such purchaser to be protected by any of the said insurance policies.

21. Waiver. The mortgagor hereby covenants and agrees that it will not at any time insist upon or plead, or in any manner whatever claim or take any advantage of, any stay, exemption or extension law or any so-called "Moratorium Law" now or at any time hereafter in force, not claim, take or insist upon any benefit or advantage of or from any law now or hereafter in force providing for the valuation or appraisal of the premises, or any part thereof prior to any sale or sales thereof to be made pursuant to any provisions herein contained, or to decree, judgment or order of any court of competent jurisdiction; or after such sale or sales claim or exercise any rights under any statute now or hereafter in force to redeem the property so sold, or any part thereof, or relating to the marshalling thereof, upon foreclosure sale or other enforcement hereof. The mortgagor hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this mortgage, it being the intent hereof that any and all such rights of redemption of the mortgagor are and shall be deemed to be hereby waived to the full extent permitted by the provisions of Chapter 110, Paragraph 15-1601 of the Illinois Revised Statutes or other applicable law or replacement statutes of the State of Illinois. The mortgagor will not invoke or utilize any such law or laws or otherwise hinder, delay or impede the execution of any right, power or remedy herein or otherwise granted or delegated to the mortgagee, but will suffer and permit the execution of every such right, power and remedy as though no such law or laws had been made or enacted. Any mortgagor which is a trustee represents that the provisions of this Section (including the waiver of redemption rights) were made at the express direction of the mortgagor's beneficiary and the persons having the power of direction over the mortgagor and are made on behalf of the trust estate of the mortgagor and the beneficiary of the mortgagor, as well as all other persons mentioned above.

22. Assignment of Rents. As further security for the indebtedness hereby secured, the mortgagor has, concurrently herewith, executed and delivered to the mortgagee a separate Assignment of Rents dated as of the date hereof, wherein and whereby, among other things, the mortgagor has assigned to the mortgagee all of the rents, issues and profits and/or any and all leases and/or the rights of management of the premises and/or of equipment used at the premises all as therein more specifically set forth, which said Assignment of Rents is hereby incorporated herein by reference as fully and with the same effect as if set forth herein at length. The mortgagor agrees that it will duly perform and observe all of the terms and provisions on its part

90451137

91447983

UNOFFICIAL COPY

Property of Cook County Clerk's Office

23. Mortgagee in possession. Nothing herein contained shall be construed as constituting the mortgagee a mortgagee in possession in the absence of the actual taking of possession of the Premises by the mortgagee. In any case in which under the provisions of this mortgage the mortgagee has a right to institute foreclosure proceedings, whether before or after any indebtedness hereby secured is declared to be immediately due as aforesaid, or whether before or after the institution of legal proceedings to foreclose the lien hereof or before or after sale thereunder, forthwith, upon demand of the mortgagee, the mortgagee shall surrender to the mortgagee and the mortgagee shall be entitled to take actual possession of the Premises or any part thereof personally, or by its agents or attorneys, as for condition broken, and the mortgagee in its discretion may, with or without force and without process of law, enter upon and take and maintain possession of all or any part of said Premises, together with all documents, records, papers and accounts of the mortgagee or then owner of the Premises relating thereto, and may exclude the mortgagee, its agents or servants, wholly therefrom and may as attorney in fact or agent of the mortgagee, or in its own name as the mortgagee and under the powers herein granted, hold, operate, manage and control the Premises and conduct the business, if any, thereof, either personally or by its agents, and with full power to use such measures, legal or equitable, as in its discretion or in the discretion of its successors or assigns may be deemed proper or necessary to enforce the payment or security of the rents, issues, and profits of the Premises, including, without limitation, actions for the recovery of rent, actions in forcible detainer and actions in distress for rent, hereby granting full

to be performed and observed under the Assignment of Rents. The mortgagee further agrees that it will duly perform and observe all the terms and provisions on lessor's part to be performed and observed under any and all leases of the Premises to the end that no default on the part of lessor shall exist thereunder. Nothing herein contained shall be deemed to obligate the mortgagee to perform or discharge any obligation, duty or liability of lessor under any such lease of the Premises, and the mortgagee shall and does hereby indemnify and hold the mortgagee harmless from any and all liability, loss or damage which the mortgagee may or might incur under any lease of the Premises or by reason of the Assignment of Rents (except for losses resulting from the mortgagee's gross negligence or willful misconduct); and any and all such liability, loss or damage incurred by the mortgagee, together with the costs and expenses, including reasonable attorneys' fees, incurred by the mortgagee in the defense of any claims or demands (whether successful or not), shall be so much additional indebtedness hereby secured, and the mortgagee shall reimburse the mortgagee therefor on demand, together with interest at the Default Rate from the date of demand to the date of payment.

90451137

91447983

UNOFFICIAL COPY

Property of Cook County Clerk's Office

power and authority to exercise each and every of the rights, privileges and powers herein granted at any and all times hereafter, without notice to the Mortgagor, and with full power to cancel or terminate any lease or sublease for any cause or on any ground which would entitle the Mortgagor to cancel the same, to elect to disaffirm any lease or sublease made subsequent to this Mortgage or subordinated to the Lien hereof, to make all necessary or proper repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements to the Premises as to it may seem judicious to the Mortgagee, to insure and reinsure the same and all risks incidental to the Mortgagee's possession, operation and management thereof and to receive all of such rents, issues and profits. Should the Mortgagee incur any costs, expenses, liability, loss or damage, under or by reason of the foregoing, or in the defense of any claims or demands with respect thereto, the amount thereof, including costs, expenses and reasonable attorneys' fees, shall constitute so much additional indebtedness hereby secured and the Mortgagor shall reimburse the Mortgagee therefor immediately upon demand, together with interest thereon at the Default Rate from the date of demand to the date of payment. The Mortgagee in the exercise of the rights and powers hereinabove conferred upon it by Section 22 and Section 23 hereof shall have full power to use and apply the avals, rents, issues and profits of the Premises to the payment of or on account of any indebtedness hereby secured, in such order of application as the Mortgagee may from time to time elect, or any deficiency which may result from any foreclosure sale.

24. Usury Exception. It is understood and agreed that the loans evidenced by the Notes and secured hereby are loans secured by a mortgage on real estate and a business loan within the purview of Paragraph 6404 of Chapter 17 of Illinois Revised Statutes (or any applicable substitute, amended, or replacement statutes under the laws of the State of Illinois) transacted solely for the purpose of carrying on or acquitting the business of the Mortgagor as contemplated by said Paragraph.

25. Contests. Notwithstanding anything to the contrary herein contained, the Mortgagor shall have the right to contest, by appropriate legal proceedings diligently prosecuted, any Taxes imposed or assessed upon the Premises or which may be or become a Lien thereon and any mechanics', materialman's or other Liens or claims for Lien upon the Premises (all herein called "Contested Liens"), and no Contested Liens shall constitute an Event of Default hereunder, if, but only if:

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

91447983 90451137

UNOFFICIAL COPY

26. Rights Cumulative. Each right, power and remedy herein conferred upon the Mortgagee is cumulative and in addition to every other right, power or remedy, express or implied, given now or hereafter existing, at law or in equity, and each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as

(d) The Mortgagee shall pay such Contested Lien and all Lien Amounts together with interest and penalties thereon (i) if and to the extent that any such Contested Lien shall be determined adverse to the Mortgagee, or (ii) forthwith upon demand by the Mortgagee if, in the option of the Mortgagee, and notwithstanding any such contest, the Premises shall be in jeopardy or in danger of being forfeited or foreclosed; provided that if the Mortgagee shall fail so to do, the Mortgagee may, but shall not be required to, pay all such Contested Liens and Lien Amounts and interest and penalties thereon and such other sums as may be necessary in the judgment of the Mortgagee to obtain the release and discharge of such Liens; and any amount expended by the Mortgagee in so doing shall be so much additional Indebtedness Hereby Secured and payable by the Mortgagee upon demand and bearing interest at the Default Rate until paid; and provided further that the Mortgagee may in such case use and apply for the purpose monies deposited as provided in Subsection 25(b) above and may demand payment upon any bond or title indemnity furnished as aforesaid.

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

(b) The Mortgagee shall deposit with the Mortgagee the full amount (herein called the "Lien Amount") of such Contested Lien or which may be secured thereby, together with such amount as Mortgagee may reasonably estimate as interest or penalties which might arise during the period of contest; provided that in lieu of such payment the Mortgagee may furnish to the Mortgagee a bond or title indemnity in such amount and form, and issued by a bond or title insuring company, as may be satisfactory to the Mortgagee;

90451137

91447983

UNOFFICIAL COPY

Property of Cook County Clerk's Office

31. Address and Notices. Any notice which any party hereto may desire or may be required to give to any other party under this Mortgage shall be in writing, and the personal delivery thereof or the passage of three days after the mailing thereof by

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

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

28. Choice of Law and Severability. This Mortgage has been executed, delivered and accepted and shall be interpreted and construed in accordance with the laws of the State of Illinois. The unenforceability or invalidity of any provision or provisions hereof shall not render any other provision or provisions herein contained unenforceable or invalid.

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

may be deemed expedient by the Mortgagee, and the exercise or the beginning of the exercise of one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy; and no delay or omission of the Mortgagee in the exercise of any right, power or remedy accruing hereunder or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any default or acquiescence therein.

91447983 90451137

UNOFFICIAL COPY

Property of Cook County Clerk's Office

34. Hazardous Material and Environmental Liability. The Mortgagee represents and warrants that, to the best of its knowledge after reasonable investigation, (i) the Real Estate and Improvements (collectively, the "Property") are, and to the best of the Mortgagee's knowledge, at all times have been, in compliance with all Environmental Laws (hereinafter defined); (ii) no notice, demand, claim or other communication has been given to or served on the Mortgagee, and the Mortgagee has no knowledge of any such notice given to previous owners or tenants of the Property, from any entity, governmental body or individual claiming any violation of any Environmental Law or demanding payment, contribution, indemnification, remedial action, removal action or any other action or inaction with respect to any actual or alleged environmental damage or injury to persons, property or

33. Future Advances. The lien of this Mortgage is intended to secure all advances from the Mortgagee to the Mortgagee pursuant to the Notes, whether made upon delivery thereof, or in the future, without regard to whether such advances are obligatory or optional. All future advances are to be treated as though made on the date of the first disbursement under the Notes, it being the intent of the parties that all advances are to be secured by a lien of equal priority. The Term Note evidences a "revolving credit" obligation from the Mortgagee to the Mortgagee. Notwithstanding the foregoing, the total principal amount on account of the Indebtedness Hereby Secured shall not exceed the sum of an amount equal to two times the face amount of the Notes, or Eight Million Five Hundred Thousand Dollars (\$8,500,000.00), exclusive of penalties, interest, fees, costs, charges or any expenses of the Mortgagee permitted hereunder.

32. Estoppel Affidavits. The Mortgagee, upon ten (10) days prior written notice, shall furnish the Mortgagee a written statement setting forth the unpaid principal balance and accrued interest on its respective indebtedness, stating whether or not any defenses exist to enforcement of the Notes, the Mortgage, or the Assignment of Rents and, if such defenses exist, stating in detail the specific facts relating to each such defense.

Richard G. Smolev, Esq.
 Sachnoff & Weaver, Ltd.
 30 South Wacker Drive
 Suite 2900
 Chicago, Illinois 60606

registered or certified mail, return receipt requested, to the addresses initially specified in the introductory paragraph hereof, or to such other place or places as any party may by notice in writing designate, shall constitute service of notice hereunder. A copy of all notices directed to the Mortgagee shall be sent to:

91447983
 90451137

UNOFFICIAL COPY

6 1 4 4 7 9

natural resources (any of the foregoing, whether now existing or hereafter brought, is herein called a "claim"), and no basis for any claim exists; (iii) no underground storage tanks are located on the property; (iv) the soil, surface water and ground water of, under or on the property are free from any hazardous material (hereinafter defined); (v) the property has never been used for or in connection with, and the mortgagor shall not permit or acquiesce in the use for or in connection with the manufacture, refinement, treatment, storage, generation, transport or hauling of any hazardous material in excess of levels permitted by applicable environmental laws or the disposal of any such material; (vi) no hazardous material has been discharged, dispersed, released, disposed of, or allowed to escape on, under or in the property; (vii) no asbestos or asbestos-containing materials have been installed, used, incorporated into or disposed of on the property; (viii) no polychlorinated biphenyls ("PCBs") are or ever have been located on, in, or used in connection with the property; and (ix) no investigation, administrative order, litigation or settlement is proposed or in existence or, to the best knowledge of the mortgagor, threatened or anticipated, with respect to or arising from the presence of any hazardous material or the transport of hazardous material with respect to the property. Notwithstanding anything herein contained to the contrary, any breach of the foregoing representations and warranties or the initiation of any claim or any such suit, proceeding or investigation shall constitute an event of default hereunder, without any notice being required or grace period whatsoever, and any and all indebtedness hereby secured shall become immediately due and payable at the election of the mortgagor and the mortgagor shall have all rights and remedies available to it as for any other event of default.

For purposes hereof, "Hazardous Material" means asbestos, asbestos-containing materials, PCBs, petroleum products, urea formaldehyde foam insulation and any other hazardous, toxic or special substance, material or waste that is defined, determined or identified as such in any federal, state or local statute, law, regulation, ordinance, order or code, in each case as amended and whether now existing or hereafter enacted or promulgated (collectively, the "Environmental Laws"), including, without limitation, the Water Pollution Control Act, 33 U.S.C. §1251 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq.; the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601 et seq.; the Safe Drinking Water Act, 42 U.S.C. § 3000 (f) et. seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601 et. seq.; and the Clean Air Act, 42 U.S.C. § 7401 et. seq.

The mortgagor hereby agrees to indemnify, defend (with counsel reasonably satisfactory to the mortgagor), and hold harmless the mortgagor, and its officers, directors, employees

91447983 90451137

and agents (collectively, the "Indemnitees") against any liability, loss, claim, damage, cost or expense (including, without limitation, reasonable attorneys' fees and disbursements, court costs, and experts' fees and disbursements) to which any of the Indemnitees may become subject insofar as they may arise out of or are based upon (a) any breach of the representations or warranties contained in this Section 34; or (b) with respect to any of the following, whether now existing or hereafter occurring: (i) any violation by the Property of any law, ordinance, rule or regulation applicable thereto, including, without limitation, the Environmental Laws; (ii) the existence of any Hazardous Material on the Property or any surrounding areas; (iii) the discharge, disbursement, release, storage, treatment, generation, disposal, or escape of any Hazardous Material under, in or on the Property or any surrounding areas; (iv) the installation, use, incorporation into or disposal on the Property of any asbestos or asbestos-containing materials; (v) the location on, in or use in connection with the Property of any PCBs; (vi) the existence of any underground storage tanks located on the Property; (vii) any proceeding, investigation, administrative order, administrative order by consent, consent order and agreement, litigation or settlement, whether or not under the provisions of the Environmental Laws, with respect to Hazardous Material on, under or in, or transported from, the Property or any surrounding areas; (viii) the enforcement of this Section 34 or the assertion by the Mortgagor of any defense to its obligations hereunder, whether any of such matters arise before or after foreclosure of the Mortgage or other taking of title to all or any portion of the Property by the Mortgagee; (ix) the costs of removal or remediation of any and all Hazardous Material from all or any portion of the Property or any surrounding areas or any property to which Hazardous Material was transported from the Property, including, without limitation, all post-foreclosure clean up and removal costs and expenses; (x) additional costs required to take necessary precautions to protect against the release of Hazardous Material on, under or affecting the Property into the air, any body of water, any other public domain or any surrounding areas; (xi) costs incurred to comply, in connection with all or any portion of the Property or any surrounding areas, with the Environmental Laws; (xii) the transportation at any time and from time to time of any hazardous material from the Property; or (xiii) costs arising from or out of any claim, action, suit or proceeding for personal injury (including, without limitation, sickness, disease or death), tangible or intangible property damage, compensation for lost wages, business income, profits, or other economic loss, damage to the natural resources or the environment, nuisance, pollution, contamination, leak, spill, release, escape, seepage, discharge, emission or other adverse effect on the environment. The Mortgagor's rights under this Mortgage shall be in addition to all rights of indemnity under the laws and regulations referenced above and any other similar applicable law and under the Loan

91447983
90451137

90

UNOFFICIAL COPY

91447983

91447983

1991 AUG 29 PM 2:31

COOK COUNTY CLERK'S OFFICE

Edward J. Wong, Jr., Esq.
Sachoff & Weaver, Ltd.
30 South Wacker Drive
Suite 2900
Chicago, Illinois 60606

This document has been prepared by: and after ~~reviewing should be~~ returned to:

Property of Cook County Clerk's Office

BY: Edward J. Wong, Jr.
Its: _____

ATTEST:

BY: Edward J. Wong, Jr.
Its: _____

E.W. KNEIP COMPANY

IN WITNESS WHEREOF, the Mortgagor hereby duly executes this Mortgage as of the date first written above.

Agreement, the Mortgage and any other Loan Document and payments by the Mortgagor under this Section 34 shall not reduce the obligations and liabilities of the Mortgagor or any guarantor of the Indebtedness Hereby Secured under any of the Loan Documents. Notwithstanding anything contained herein or in any other document or agreement which may be construed to the contrary, the performance of the Mortgagor's obligations under this Section 34 and under the Environmental Laws shall not be subject to any laws requiring a secured lender to exhaust remedies against security prior to recovering a deficiency. The terms and conditions of this Section 34 shall survive the payment and satisfaction of the Indebtedness Hereby Secured and the release of the Mortgage and other Loan Documents and shall continue to be the personal obligation, liability and indemnification of the Mortgagor binding upon the Mortgagor forever.

1137

90451137

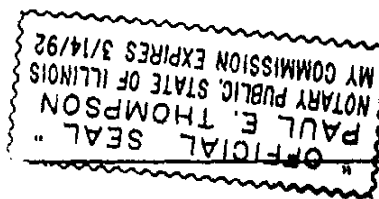
91447983

UNOFFICIAL COPY

91447983

90451137

Property of Cook County Clerk's Office



My commission expires:

[Signature]
Notary Public

GIVEN under my hand and official seal this 17th day of September, 1990.

I, PAUL E. THOMPSON, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that KENNETH SPENCE, as PRESIDENT and MARK PRICH, as SECRETARY, appeared before me this day in person and acknowledged that as such officers of E.W. Knip Company, an Illinois corporation, such officers signed and delivered the foregoing instrument pursuant to the authority given by the board of directors of the corporation as such officers, free and voluntary act and as the free and voluntary act and deed on behalf of the corporation, for the uses and purposes therein set forth.

STATE OF ILLINOIS)
COUNTY OF LAKE)
SS)

UNOFFICIAL COPY

9 1 4 4 7 9 5

I:\EJW3\143154\MFG\MFC00882

90:151137

91447983

Property of Cook County Clerk's Office

Permanent Index Tax Number: 17-21-122-020-0000
Volume 600

LOT "A" OF E. MEYER AND COMPANY, INCORPORATED
CONSOLIDATION OF CERTAIN LOTS, VACATED ALLEYS
AND VACATED STREET IN BLOCK ~~58~~ IN CANAL
TRUSTEES NEW SUBDIVISION OF BLOCKS IN THE
NORTH WEST 1/4 OF SECTION 21, TOWNSHIP 39
NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL
MERIDIAN, (EXCEPT BLOCKS 57 AND 58) ACCORDING
TO THE PLAT RECORDED AS DOCUMENT 19520016, IN
COOK COUNTY, ILLINOIS.

The real property located at the premises commonly known as
550 West 14th Place, Chicago, Cook County, Illinois 60607 and
legally described as follows:

EXHIBIT A
(Legal Description)

9 1 4 4 7 9 5

UNOFFICIAL COPY

H:\DRM2\143134\NTR\DRM1032.V2

90451137

In the event Borrower desires to prepay Borrower's Obligations evidenced by this Promissory Note, it may do so only upon payment to Bank of the following prepayment penalty in addition to all other

Notwithstanding the interest rates set forth above, Borrower shall pay to Bank a minimum aggregate monthly interest charge of Fifteen Thousand Dollars (\$15,000.00) per calendar month until maturity. Borrower agrees to pay said amount on demand to the full extent permitted by law.

If any Borrower's Obligations is not paid after the occurrence of an Event of Default, interest, in lieu of the interest rate hereinabove provided, shall accrue thereon from the due date of the same until paid, at the rate of 4.5% per annum in excess of Reference Rate as above defined. Such amounts shall be part of Borrower's Obligations immediately due and payable by Borrower to Bank without notice by Bank to or demand by Bank of Borrower.

9864798

Except as hereinafter provided, Borrower's obligations and liabilities to Bank under this Note ("Borrower's Obligations") unpaid from time to time shall bear interest from the date hereof until paid: at a daily rate equal to the daily rate equivalent of 1.6% per annum, computed on a basis of a 360-day year, in excess of the rate of interest announced from time to time by Bank as its reference rate for interest rate determinations, which rate may not be the lowest rate referred to herein as the "Reference Rate". The foregoing rate of interest to be charged hereunder shall fluctuate hereafter from time to time concurrently with and in an amount equal to each increase or decrease in the Reference Rate. Interest for each month shall be due and payable as of the first day of the next month, at Bank's principal place of business.

FOR VALUE RECEIVED E. W. KNEIP COMPANY, an Illinois corporation, ("Borrower") promises to pay to the order of BANK ONE, MILWAUKEE, N.A. ("Bank"), at such place or places as Bank may from time to time designate in writing, the principal sum of Two Million Two Hundred Fifty Thousand and no/100 dollars (\$2,250,000.00) or such lesser principal sum as may then be owed by Borrower to Bank hereunder. This note evidences a revolving credit obligation of Borrower under which Borrower may borrow, repay and reborrow amounts subject to the limitations set forth herein and under that certain Loan and Security Agreement executed by Borrower of even date herewith. All amounts due hereunder shall be due on the one-year anniversary of the date hereof.

\$2,250,000.00 Milwaukee, Wisconsin September 17, 1990

PROMISSORY NOTE

[EXHIBIT B]

UNOFFICIAL COPY

Property of Cook County Clerk's Office

30451137

Upon an Event of Default hereunder, at the option of Bank and without notice by Bank to or demand by Bank of Borrower, all of Borrower's Obligations shall be due and payable, forthwith. The acceptance by Bank of any partial payment made hereunder after the time when any obligation under this Note becomes due and payable will not establish a custom, or waive any rights of Bank to enforce prompt payment hereof. Borrower and every endorser hereof waive

31447983

The occurrence of any one of the following events shall constitute a default by Borrower ("Event of Default") under this Note: (a) if Borrower fails to pay when due or when declared due any of Borrower's Obligations; (b) if Borrower fails to perform or observe any term, provision, condition, covenant, warranty or representation contained in this Note which is required to be performed or observed by Borrower; (c) occurrence of a default or an Event of Default under any agreement, instrument or document heretofore, now or at any time or times hereafter delivered by Borrower to Bank; or (d) occurrence of a default or an Event of Default under any agreement, instrument or document heretofore now or at any time or times hereafter delivered to Bank by any guarantor of Borrower's Obligations.

Borrower warrants and represents to Bank that Borrower shall use the proceeds represented by this Note solely for proper business purposes, and consistently with all applicable laws and statutes. Borrower further warrants and represents to Bank and covenants with Bank that Borrower is not in the business of extending credit for the purpose of purchasing or carrying margin securities (within the meaning of Regulation U issued by the Board of Governors of the Federal Reserve System), and no proceeds represented by this Note will be used to purchase or carry any margin securities or to extend credit to others for the purpose of purchasing or carrying any margin securities.

Any check, draft or similar item of payment by or for the account of Borrower delivered to Bank on account of Borrower's Obligations shall, provided the same is honored by Bank and final settlement thereof is reflected by irrevocable credit to Bank, be applied by Bank on account of Borrower's Obligations two (2) business days after the date the Commercial Finance Department of the Bank actually received the same.

Borrower Obligations then due: (i) \$42,500.00 if prepayment is made prior to the first anniversary date hereof; (ii) \$21,250.00 if prepayment is made prior to the second anniversary date hereof; and (iii) \$21,250.00 if prepayment is made prior to the third anniversary of the date hereof or upon failure to provide notice ninety (90) days prior to the prepayment. In no event shall the aggregate prepayment penalty to be paid by Borrower exceed the amounts set forth herein. No prepayment penalty will be due if prepayment is made at any time after the third anniversary of the date hereof.

00451137

H:\DRM2\143154\NTR\DRM1032.V2

This Note is submitted by Borrower to Bank at Bank's principal place of business and shall be deemed to have been made there at. This Note shall be governed and controlled by the internal laws of the State of Wisconsin

If any provision of this Note or the application thereof to any party or circumstance is held invalid or unenforceable, the remainder of this Note and application of such provision to other parties or circumstances will not be affected thereby and the provisions of this Note shall be severable in any such instance.

If at any time or times after the date of this Note, Bank: (a) employs counsel which Bank reasonably believes is necessary for advice or other representation (i) with respect to this Note, or any collateral securing Borrower's Obligations hereunder, (ii) to represent Bank in any litigation, contest, dispute, suit or proceeding or to commence, defend or intervene or to take any other action in or with respect to any litigation, contest, dispute or proceeding (whether instituted by Bank, Borrower or any other person) in any way or respect relating to this Note, any collateral securing Borrower's Obligations hereunder or Borrower's affairs, or (iii) to enforce any rights of Bank against Borrower; (b) takes any action to protect, collect, sell, liquidate or otherwise dispose of any collateral securing Borrower's Obligations hereunder; and/or (c) enforces or attempts to enforce any of Bank's rights and remedies against Borrower or any guarantor of Borrower's Obligations, the reasonable costs and expenses incurred by Bank in any manner or way with respect to the foregoing shall be part of Borrower's Obligations hereunder, payable by Borrower to Bank on demand. Without limiting the generality of the foregoing, such expenses, costs, charges and fees include: (i) reasonable attorneys' fees, costs and expenses; and (ii) reasonable accountants' fees, costs and expenses.

This Note and Borrower's Obligations hereunder are secured by all mortgages, security interests, liens and encumbrances heretofore, now or hereafter granted to Bank by Borrower and/or every guarantor of Borrower's Obligations, including that certain Mortgage and Assignment of Rents, each dated of even date herewith, with respect to real estate in Cook County, Illinois. Regardless of the adequacy of any collateral securing Borrower's Obligations hereunder, any deposits or other sums at any time created by or payable or due from Bank to Borrower, or any monies, cash, cash equivalents, securities, instruments, documents or other assets of Borrower in possession or control of Bank and its bailee for any purpose may at any time be reduced to cash and applied by Bank to or set-off by Bank against Borrower's Obligations hereunder.

presentment, demand and protest and notice of presentment, protest, default, non-payment, maturity, release, compromise, settlement, extension or renewal of this Note.

01447983

9 1 4 4 7 9

H:\DRN2\143154\MTR\DRN1032.V2

-4-

90451137

91447983

Property of Cook County Clerk's Office

Its:

By:

E. W. KNEIP COMPANY
527 South Jefferson Street
Chicago, IL 60607

(CORPORATE SEAL)

ATTEST:

To induce Bank to accept this Note, Borrower, irrevocably, agrees that, subject to Bank's sole and absolute election, all actions or proceedings in any way, manner or respect, arising out of or from or related to this Note, shall be litigated in courts having situs within the City of Milwaukee, State of Wisconsin. Borrower hereby consents and submits to the jurisdiction of any local, state or federal court located within said city and state. Borrower hereby appoints CT Corporation System ("CT") as Borrower's true and lawful attorney-in-fact and duly authorized agent for service of legal process. Such service may be made by sending such process to Borrower at CT's office in Madison, located on the date hereof at 222 W. Washington Avenue, Madison, Wisconsin 53703 and Borrower irrevocably directs CT to accept such service on its behalf. Borrower hereby waives any right Borrower may have to transfer or change the venue of any litigation brought against Borrower by Bank in accordance with this paragraph.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

0 1 4 4 7 9 5

H:\DRM2\143154\MTB\DRM1033.V2

In the event Borrower desires to prepay Borrower's Obligations evidenced by this Promissory Note, it may do so only upon payment to Bank of the following prepayment penalty in addition to all other Borrower Obligations then due: (i) \$42,500 if prepayment is made prior to the first anniversary date hereof; (ii) \$21,250 if prepayment is made prior to the second anniversary date hereof; and

Notwithstanding the interest rates set forth above, Borrower shall pay to Bank a minimum aggregate monthly interest charge of fifteen thousand dollars (\$15,000.00) per calendar month until maturity. Borrower agrees to pay said amount on demand to the full extent permitted by law.

If any of Borrower's Obligations is not paid after an event of Default, interest, in lieu of the interest rate hereinabove provided, shall accrue thereon from the due date of the same until paid, at the rate of 4.5% per annum computed on the basis of a 360-day year, in excess of the Reference Rate as above defined. Such amounts shall be part of Borrower's Obligations immediately due and payable by Borrower to Bank without notice by Bank to or demand by Bank of Borrower.

Except as hereinafter provided, Borrower's liabilities and obligations to Bank under this Note ("Borrower's Obligations") shall bear interest from the date hereof until paid at a daily rate equal to the daily rate equivalent of 1.6% per annum, computed on a basis of a 360-day year, in excess of the rate of interest announced from time to time by Bank as its reference rate for interest rate determinations, which rate may not be the lowest rate charged by Bank to its customers (such announced rate of interest referred to herein as the "Reference Rate"). The foregoing rate of interest to be charged hereunder shall fluctuate hereafter from time to time concurrently with and in an amount equal to each increase or decrease in the Reference Rate. Interest for each month shall be due and payable as of the first day of the next month at Bank's principal place of business.

FOR VALUE RECEIVED E. W. KNEIP COMPANY, an Illinois corporation, ("Borrower") promises to pay to the order of BANK ONE, MILWAUKEE, N.A. ("Bank"), at such place or places as Bank may from time to time designate in writing, the principal sum of Six Hundred Forty thousand dollars (\$640,000) in thirty-five (35) successive equal monthly payments of \$10,667 together with interest thereon commencing October 1, 1990 through August 1, 1993 and a final installment of \$266,655 together with remaining interest thereon on September 1, 1993.

\$640,000 Milwaukee, Wisconsin September 17, 1990

INSTALLMENT NOTE

[EXHIBIT C]

20451137

38624516

UNOFFICIAL COPY

Property of Cook County Clerk's Office

31447983 90451137

Upon an Event of Default hereunder, at option of Bank and without notice by Bank to or demand by Bank of Borrower, all of Borrower's Obligations shall be due and payable, forthwith. The acceptance by Bank of any partial payment made hereunder after the time any of Borrower's Obligations under this Note becomes due and payable will not establish a custom, or waive any rights of Bank to enforce prompt payment hereof. Borrower and every endorser hereof waive presentment, demand and protest and notice of presentment, protest, default, non-payment, maturity, release, compromise, settlement, extension or renewal of this Note.

The occurrence of any one of the following events shall constitute a default by Borrower ("Event of Default") under this Note: (a) if Borrower fails to pay when due or when declared due any of Borrower's Obligations; (b) if Borrower fails to perform or observe any term, provision, condition, covenant, warranty or representation contained in this Note which is required to be performed or observed by Borrower; (c) occurrence of a default or an Event of Default under any agreement, instrument or document heretofore, now or at any time or times hereafter delivered by Borrower to Bank; or (d) occurrence of a default or an Event of Default under any agreement, instrument or document heretofore now or at any time or times hereafter delivered to Bank by any guarantor of Borrower's Obligations.

Borrower warrants and represents to Bank that Borrower shall use the proceeds represented by this Note solely for proper business purposes, and consistently with all applicable laws and statutes. Borrower further warrants and represents to Bank and covenants with Bank that Borrower is not in the business of extending credit for the purpose of purchasing or carrying margin securities (within the meaning of Regulation U issued by the Board of Governors of the Federal Reserve System), and no proceeds represented by this Note will be used to purchase or carry any margin securities or to extend credit to others for the purpose of purchasing or carrying any margin securities.

Any check, draft or similar item of payment by or for the account of Borrower delivered to Bank on account of Borrower's Obligations shall, provided the same is honored by Bank and final settlement thereof is reflected by irrevocable credit to Bank, be applied by Bank on account of Borrower's Obligations two (2) business days after the date the Commercial Finance Department of the Bank actually received the same.

(iii) \$21,250 if prepayment is made prior to the third anniversary date hereof or upon failure to provide notice ninety (90) days prior to prepayment. In no event shall the aggregate prepayment penalty to be paid by Borrower exceed the amounts set forth herein. No prepayment penalty will be due if payment is made at any time after the third anniversary hereof.

91447983

91447983

To induce Bank to accept this Note, Borrower, irrevocably, agrees that, subject to Bank's sole and absolute election, all actions or proceedings in any way, manner or respect, arising out of or from or related to this Note, shall be litigated in courts

This Note is submitted by Borrower to Bank at Bank's principal place of business and shall be deemed to have been made there at. This Note shall be governed and controlled by the internal laws of the State of Wisconsin

If any provision of this Note or the application thereof to any party or circumstance is held invalid or unenforceable, the remainder of this Note and application of such provision to other parties or circumstances will not be affected thereby and the provisions of this Note shall be severable in any such instance.

It at any time or times after the date of this Note, Bank: (a) employs counsel which Bank reasonably believes is necessary for advice or other representation (i) with respect to this Note, or any collateral securing Borrower's Obligations hereunder, (ii) to represent Bank in any litigation, contest, dispute, suit or proceeding or to commence, defend or intervene or to take any other action in or with respect to any litigation, contest, dispute or proceeding (whether instituted by Bank, Borrower or any other person) in any way or respect relating to this Note, any collateral securing Borrower's Obligations hereunder or Borrower's affairs, or (iii) to enforce any rights of Bank against Borrower; (b) takes any action to protect, collect, sell, liquidate or otherwise dispose of any collateral securing Borrower's Obligations hereunder; and/or (c) enforces or attempts to enforce any of Bank's rights and remedies against Borrower or any guarantor of Borrower's Obligations, the reasonable costs and expenses incurred by Bank in any manner or way with respect to the foregoing shall be part of Borrower's Obligations hereunder, payable by Borrower to Bank on demand. Without limiting the generality of the foregoing, such expenses, costs, charges and fees include: (i) reasonable attorneys' fees, costs and expenses; and (ii) reasonable accountants' fees, costs and expenses.

This Note and Borrower's Obligations hereunder are secured by all mortgages, security interests, liens and encumbrances heretofore, now or hereafter granted to Bank by Borrower and/or every guarantor of Borrower's Obligations, including that certain Mortgage and Assignment of Rents, each dated of even date herewith with respect to real estate in Cook County, Illinois. Regardless of the adequacy of any collateral securing Borrower's Obligations hereunder, any deposits or other sums at any time credited by or payable or due from Bank to Borrower, or any monies, cash, cash equivalents, securities, instruments, documents or other assets of Borrower in possession or control of Bank or its bailee for any purpose may at any time be reduced to cash and applied by Bank to or set-off by Bank against Borrower's Obligations hereunder.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

9 1 4 4 7 9

H:\DRM2\143154\NTR\DRM1012

-1-

90451137

91447983

Property of Cook County Clerk's Office

Its:

By:

E. W. KNEIP COMPANY
527 South Jefferson Street
Chicago, IL 60607

(CORPORATE SEAL)

ATTEST:

having situs within the City of Milwaukee, State of Wisconsin. Borrower hereby consents and submits to the jurisdiction of any local, state or federal court located within said city and state. Borrower hereby appoints CT Corporation System ("CT") as Borrower's true and lawful attorney-in-fact and duly authorized agent for service of legal process. Such service may be made by sending such process to Borrower at CT's office in Madison, located on the date hereof at 222 W. Washington Avenue, Madison, Wisconsin 53703 and Borrower irrevocably directs CT to accept such service on its behalf. Borrower hereby waives any right Borrower may have to transfer or change the venue of any litigation brought against Borrower by Bank in accordance with this paragraph.

H:\dfrn2\143154\ntc\dfrn1043.v2

30451137

In the event Borrower desires to prepay Borrower's Obligations evidenced by this Promissory Note, it may do so only upon payment to Bank of the following prepayment penalty in addition to all other Borrower Obligations then due: (i) \$42,500 if prepayment is made prior to the first anniversary date hereof; (ii) \$21,250 if prepayment is made prior to the second anniversary date hereof; and

Notwithstanding the interest rates set forth above, Borrower shall pay to Bank a minimum aggregate monthly interest charge of Fifteen Thousand Dollars (\$15,000.00) per calendar month until maturity. Borrower agrees to pay said amount on demand to the full extent permitted by law.

If any of Borrower's Obligations is not paid after an Event of Default, interest, in lieu of the interest rate hereinabove provided, shall accrue thereon from the due date of the same until paid, at the rate of 4.5% per annum computed on the basis of a 360-day year, in excess of the Reference Rate as above defined. Such amounts shall be part of Borrower's Obligations immediately due and payable by Borrower to Bank without notice by Bank to or demand by Bank of Borrower.

Except as hereinafter provided, Borrower's liabilities and obligations to Bank under this Note ("Borrower's Obligations") shall bear interest from the date hereof until paid at a daily rate equal to the daily rate equivalent of 1.6% per annum, computed on a basis of a 360-day year, in excess of the rate of interest announced from time to time by Bank as its reference rate for interest rate determinations, which rate may not be the lowest rate charged by Bank to its customers (such announced rate of interest referred to herein as the "Reference Rate"). The foregoing rate of interest to be charged hereunder shall fluctuate hereafter from time to time concurrently with and in an amount equal to each increase or decrease in the Reference Rate. Interest for each month shall be due and payable as of the first day of the next month at Bank's principal place of business.

FOR VALUE RECEIVED E. W. KNEIP COMPANY, an Illinois corporation, ("Borrower") promises to pay to the order of BANK ONE, MILWAUKEE, N.A. ("Bank"), at such place or places as Bank may from time to time designate in writing, the principal sum of One Million, Three Hundred Sixty Thousand Dollars (\$1,360,000) in thirty-five (35) successive equal monthly payments of \$11,333 together with interest thereon commencing October 1, 1990 through August 1, 1993 and a final installment of \$963,345 together with remaining interest thereon on September 1, 1993.

\$1,360,000 Milwaukee, Wisconsin September 17, 1990

INSTALLMENT NOTE

[EXHIBIT D]

91447983

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

6 7 1 5

H:\dftn2\143154\nc\dfn1043.v2

Upon an Event of Default hereunder, at option of Bank and without notice by Bank to or demand by Bank of Borrower, all of Borrower's Obligations shall be due and payable, forthwith. The acceptance by Bank of any partial payment made hereunder after the time any of Borrower's Obligations under this Note becomes due and payable will not establish a custom, or waive any rights of Bank to enforce prompt payment hereof. Borrower and every endorser hereof waive presentment, demand and protest and notice of presentment, protest, default, non-payment, maturity, release, compromise, settlement, extension or renewal of this Note.

The occurrence of any one of the following events shall constitute a default by Borrower ("Event of Default") under this Note: (a) If Borrower fails to pay when due or when declared due any of Borrower's Obligations; (b) If Borrower fails to perform or observe any term, provision, condition, covenant, warranty or representation contained in this Note which is required to be performed or observed by Borrower; (c) Occurrence of a default or an Event of Default under any agreement, instrument or document heretofore, now or at any time or times hereafter delivered by Borrower to Bank; or (d) Occurrence of a default or an Event of Default under any agreement, instrument or document heretofore now or at any time or times hereafter delivered to Bank by any guarantor of Borrower's Obligations.

Borrower warrants and represents to Bank that Borrower shall use the proceeds represented by this Note solely for proper business purposes, and consistently with all applicable laws and statutes. Borrower further warrants and represents to Bank and covenants with Bank that Borrower is not in the business of extending credit for the purpose of purchasing or carrying margin securities (within the meaning of Regulation U issued by the Board of Governors of the Federal Reserve System), and no proceeds represented by this Note will be used to purchase or carry any margin securities or to extend credit to others for the purpose of purchasing or carrying any margin securities.

Any check, draft or similar item of payment by or for the account of Borrower delivered to Bank on account of Borrower's Obligations shall, provided the same is honored by Bank and final settlement thereof is reflected by irrevocable credit to Bank, be applied by Bank on account of Borrower's Obligations two (2) business days after the date the Commercial Finance Department of the Bank actually received the same.

(\$21,250 If payment is made prior to the third anniversary date hereof or upon failure to provide notice ninety (90) days prior to the prepayment. In no event shall the aggregate prepayment penalty to be paid by Borrower exceed the amounts set forth herein. No prepayment penalty will be due if payment is made at any time after the third anniversary hereof.

90451137

91447983

6 7 1 5

30451137

K:\dfrn2\143154\ntc\dfrn1043.v2

To induce Bank to accept this Note, Borrower, irrevocably, agrees that, subject to Bank's sole and absolute election, all actions or proceedings in any way, manner or respect, arising out of or from or related to this Note, shall be litigated in courts

This Note is submitted by Borrower to Bank at Bank's principal place of business and shall be deemed to have been made there at. This Note shall be governed and controlled by the internal laws of the State of Wisconsin

If any provision of this Note or the application thereof to any party or circumstance is held invalid or unenforceable, the remainder of this Note and application of such provision to other parties or circumstances will not be affected thereby and the provisions of this Note shall be severable in any such instance.

91447983

It at any time or times after the date of this Note, Bank: (a) employs counsel which Bank reasonably believes is necessary for advice or other representation (i) with respect to this Note, or any collateral securing Borrower's Obligations hereunder, (ii) to represent Bank in any litigation, contest, dispute, suit or proceeding or to commence, defend or intervene or to take any other action in or with respect to any litigation, contest, dispute or proceeding (whether instituted by Bank, Borrower or any other person) in any way or respect relating to this Note, any collateral securing Borrower's Obligations hereunder or Borrower's affairs, or (iii) to enforce any rights of Bank against Borrower; (b) takes any action to protect, collect, sell, liquidate or otherwise dispose of any collateral securing Borrower's Obligations hereunder; and/or (c) enforces or attempts to enforce any of Bank's rights and remedies against Borrower or any guarantor of Borrower's Obligations, the reasonable costs and expenses incurred by Bank in any manner or way with respect to the foregoing shall be part of Borrower's Obligations hereunder, payable by Borrower to Bank on demand. Without limiting the generality of the foregoing, such expenses, costs, charges and fees include: (i) reasonable attorneys' fees, costs and expenses; and (ii) reasonable accountants' fees, costs and expenses.

This Note and Borrower's Obligations hereunder are secured by all mortgages security interests, liens and encumbrances heretofore, now or hereafter granted to Bank by Borrower and/or every guarantor of Borrower's Obligations including that certain Mortgage and Assignment of Rents, each dated of even date herewith with respect to real estate in Cook County, Illinois. Regardless of the adequacy of any collateral securing Borrower's Obligations hereunder, any deposits or other sums at any time credited by or payable or due from Bank to Borrower, or any monies, cash, cash equivalents, securities, instruments, documents or other assets of Borrower in possession or control of Bank or its bailee for any purpose may at any time be reduced to cash and applied by Bank to or set-off by Bank against Borrower's Obligations hereunder.

UNOFFICIAL COPY

6 / 2 / 9

H:\dm2\143154\ntc\dm1043.v2

-4-

90451137

91447983

Property of Cook County Clerk's Office

having situs within the City of Milwaukee, State of Wisconsin. Borrower hereby consents and submits to the jurisdiction of any local, state or federal court located within said city and state. Borrower hereby appoints CT Corporation System ("CT") as Borrower's true and lawful attorney-in-fact and duly authorized agent for service of legal process. Such service may be made by sending such process to Borrower at CT's office in Madison, located on the date hereof at 222 W. Washington Avenue, Madison, Wisconsin 53703 and Borrower irrevocably directs CT to accept such service on its behalf. Borrower hereby waives any right Borrower may have to transfer or change the venue of any litigation brought against Borrower by Bank in accordance with this paragraph.

ATTEST: E. W. KNEIP COMPANY
527 South Jefferson Street
Chicago, IL 60607
(CORPORATE SEAL)

By: _____
Its: _____