

# UNOFFICIAL COPY

92511793

## MORTGAGE, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT

1992 JUL 14 PM 2:54

92511793

1072

THIS MORTGAGE, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT (hereinafter referred to as this "Mortgage") is made as of June 15, 1992 from Lonnie A. Peterson and Cynthia A. Peterson, his wife (singularly, a "Mortgagor", collectively, the "Mortgagors"), with a mailing address at 1223 Indian Hill Drive, Schaumburg, Illinois 60172 and Affiliated Bank ("Mortgagee"), with a mailing address at 3044 Rose Street, Franklin Park, Illinois 60131;

73 73369 01

WHEREAS, Mortgagors have executed and delivered to Mortgagee a promissory note of even date herewith, payable to the order of the Mortgagee in the principal sum of Three Hundred Seventy-Five Thousand (\$375,000.00) Dollars (the "Note"), whereunder Mortgagors promise to pay Mortgagee said principal sum in one hundred seventy-nine successive monthly installments of principal in the sum of \$2,083.33 each, commencing on September 1, 1992, and continuing on the same date of each month thereafter together with interest payable monthly (concurrently with each installment of principal) on the unpaid principal balances calculated at the variable rate per annum equal to the prime rate of interest announced by Affiliated Bank from time to time, such rate to change on the day or days said prime rate changes, plus a final payment of the entire remaining unpaid principal and interest due on August 1, 2007. Interest shall be calculated on the unpaid principal balances of the Note after maturity or default calculated at the variable rate per annum of six percent (6%) above the prime rate of Affiliated Bank (the "Default Rate").

WHEREAS, the proceeds of the Note will be advanced in multiple disbursements to Mortgagors by Mortgagee for financing the cost of the construction of improvements (the "Improvement") on the Mortgaged Premises (defined below) pursuant to the terms of that certain commitment letter dated March 11, 1992 issued by Mortgagee to Mortgagors, as amended by amendment thereto dated June 15, 1992 (the "Commitment Letter").

To secure (a) the repayment of the debt evidenced by the Note, with interest, when the same becomes due and payable (whether by lapse of time, acceleration or otherwise), and all extensions, conversions, renewals, modifications, and refinancings thereof; (b) the payment of all other indebtedness, obligations and liabilities which this Mortgage secures pursuant to any of its terms, including, without limitation, all costs of collection, including reasonable attorneys' fees upon default and sums advanced by Mortgagee, with interest, to protect the security of this Mortgage; and (c) the performance of Mortgagors' covenants and agreements under this Mortgage and the Note, Mortgagors do hereby GRANT, MORTGAGE, CONVEY AND ASSIGN to Mortgagee, its successors and assigns the following described real estate situated in the County of Cook, State of Illinois, to wit:

### PARCEL 1:

LOTS 1, 2 AND 3 AND ALL OF THE PRIVATE ALLEY SOUTH OF AND ADJOINING SAID LOTS IN DUCK'S SUBDIVISION OF LOTS 1 AND 2 IN BLOCK 1 IN SAWYER'S ADDITION TO CHICAGO IN THE SOUTHWEST 1/4 OF SECTION 8, TOWNSHIP 39

459

92511793

# UNOFFICIAL COPY

NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

LOTS 6 AND 7 IN DUCK'S SUBDIVISION OF LOTS 1 AND 2 IN BLOCK 1 IN SAWYER'S ADDITION TO CHICAGO IN THE SOUTHWEST 1/4 OF SECTION 8, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 3:

LOT 8 IN DUCK'S SUBDIVISION OF LOTS 1 AND 2 IN BLOCK 1 IN SAWYER'S ADDITION TO CHICAGO IN THE SOUTHWEST 1/4 OF SECTION 8, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

PARCEL 4:

THAT PART OF THE PRIVATE ALLEY LYING NORTH OF AND ADJOINING LOT 6 AND LYING SOUTH OF AND ADJOINING LOTS 4 AND 5 IN DUCK'S SUBDIVISION OF LOTS 1 AND 2 IN BLOCK 1 IN SAWYER'S ADDITION TO CHICAGO IN THE SOUTHWEST 1/4 OF SECTION 8, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

Address: 168-170 N. Elizabeth and 1301-1305 W. Lake St., Chicago, IL

P. I. N. 17-08-325-007-0000 17-08-325-008-0000 17-08-325-009-0000  
17-08-325-010-0000 17-08-325-013-0000 17-08-325-026-0000

Document prepared by Bennett L. Coher, Three First National Plaza, Chicago, IL 60602

The term "Note" as used in this Mortgage shall refer to the Note defined above, as well as any subsequent promissory note executed by Mortgagors evidencing the extension, conversion, renewal, modification or refinancing of the Note defined above.

TOGETHER WITH (1) all buildings, improvements, fixtures, appurtenances, easements and hereditaments thereto belonging; and together with all equipment and machinery now or hereafter therein or thereon used to supply heat, gas, air conditioning, electrical, sprinkler systems, plumbing, water, light, power, refrigeration and ventilation; elevators, escalators, communication and electronic monitoring equipment, tanks, pumps and together with any other fixtures, equipment, machinery or other personal property now or hereafter placed on the above described property which shall be employed in connection with the operation, use, occupancy or enjoyment thereof; (2) all right, title and interest of Mortgagors, including any after-acquired title or reversion, in and to the rights-of-way, roads, streets, avenues and alleys adjoining the Mortgaged Premises; (3) all rents, issues, proceeds and profits accruing and to accrue from the Mortgaged Premises and all right, title and interest of Mortgagors in and to any and all leases approved by Mortgagee now or hereafter on or affecting the Mortgaged Premises, whether written or oral, and all other leases and agreements for the use thereof (collectively "Leases"), together with all security therefor and all monies payable thereunder, subject, however, to the conditional permission of Mortgagee given to Mortgagors to collect the rentals to be paid pursuant thereto, provided Mortgagors shall not be in default

5551793

# UNOFFICIAL COPY

hereunder; and (4) all proceeds heretofore or hereafter payable to Mortgagors by reason of loss or damage by fire and such other hazards, casualties and contingencies insured pursuant to the insurance policies hereinafter described and awards and other compensation heretofore or hereafter payable to Mortgagors for any taking by condemnation or eminent domain proceedings of all or any part of the Mortgaged Premises or any easement or appurtenance thereof, including severance and consequential damage. (Said real estate and all of the above collectively referred to herein as the "Mortgaged Premises")

TO HAVE AND TO HOLD the Mortgaged Premises unto Mortgagee, its successors and assigns forever (Mortgagors hereby RELEASING AND WAIVING all rights under and by virtue of the homestead exemption laws of the State of Illinois and all rights of homestead created by the Federal Bankruptcy Code) provided, however, that if and when all principal and accrued interest on the Note and all other indebtedness and obligations hereby secured shall be paid in full and Mortgagors shall perform all of the terms, covenants and agreements contained herein, then this Mortgage shall be released upon the written request and expense of Mortgagors.

Mortgagors covenant and warrant to Mortgagee that Mortgagors are lawfully seized of the real estate hereby conveyed and have the right to mortgage, grant and convey the Mortgaged Premises; that the Mortgaged Premises are unencumbered and that Mortgagors will warrant and defend generally the title to the Mortgaged Premises against all claims and demands, subject to any declarations, easements and restrictions listed in a schedule of exceptions to coverage in the ALTA Construction Loan Policy issued by Chicago Title Insurance Company ("Title Insurer") to Mortgagee, insuring the lien of this Mortgage.

MORTGAGORS HEREBY FURTHER COVENANT, REPRESENT, AND WARRANT TO MORTGAGEE, AND AGREE AS FOLLOWS:

1. Mortgagors hereby covenant to Mortgagee, and agree: (a) that Mortgagors shall pay when due all indebtedness secured by this Mortgage, all interest thereon and all other indebtedness, obligations and liabilities which this Mortgage secures; (b) not to commit or permit to exist any waste of the Mortgaged Premises and to keep the Mortgaged Premises in good condition and repair; (c) to keep the Mortgaged Premises free of any mortgage, trust deed, mechanic's lien, or other lien or encumbrance; (d) not to suffer or permit unlawful use or any nuisance to exist upon the Mortgaged Premises; (e) not to abandon the Mortgaged Premises; (f) to pay when due any indebtedness or liability which may be secured by a mortgage, lien, other encumbrance or charge on all or any part of the Mortgaged Premises equal or senior in priority to this Mortgage; (g) immediately after destruction or damage to all or any part of the Mortgaged Premises to commence and promptly complete the rebuilding or restoration of buildings, improvements and all other property now or hereafter on the Mortgaged Premises unless Mortgagee elects to apply the proceeds of insurance to the indebtedness secured by this Mortgage as hereinafter provided; (h) to comply with all laws, regulations, rulings, ordinances, orders and all other requirements imposed by any governmental or other competent authority and with all restrictions, covenants and conditions relating to the Mortgaged Premises, the construction of the Improvement, or to the use of thereof; (i) to furnish to the Mortgagee such information and data with respect to the financial condition, business affairs and operations of Mortgagors and the Mortgaged Premises as may be reasonably requested no more often than annually, unless otherwise agreed to (all such

# UNOFFICIAL COPY

information and data to be prepared in accordance with generally accepted accounting principles consistently applied); (j) that if the Mortgaged Premises are now or hereafter located in an area which has been identified by the Secretary of Housing and Urban Development as a flood hazard area and in which flood insurance has been made available under the National Flood Insurance Act of 1968, as may be amended from time to time (the "Act"), the Mortgagors will keep the Mortgaged Premises covered for the term of the Note by flood insurance up to the maximum limit of coverage available under the Act; and (k) that Mortgagee shall have the right, at any time upon an Event of Default hereunder, to set-off, appropriate and apply toward payment of any indebtedness secured by this Mortgage, in such order of application as Mortgagee may from time to time elect, any cash, credit, deposits, accounts, securities, and any other property of Mortgagors which is in transit to or in possession, custody or control of the Mortgagee, or any agent or bailee of Mortgagee.

2. Mortgagors hereby represent and warrant the following to Mortgagee: (a) that Mortgagors are in full compliance with the terms and conditions of the Commitment Letter on the date hereof, and will be at all times hereafter; (b) except as disclosed in writing by Mortgagors to Mortgagee and Title Insurer, no work of any kind (including the destruction or removal of any existing improvements, site work, clearing, grubbing, draining or fencing of the Mortgaged Premises) shall have commenced or shall have been performed on the Mortgaged Premises, no equipment or material shall have been delivered to or upon the Mortgaged Premises for any purpose whatsoever, and no contract (or memorandum or affidavit thereof) for the supplying of labor, materials, or services for the construction of the Improvement shall have been recorded in the mechanic's lien or other appropriate records in the locality where the Mortgaged Premises are located; (c) if Mortgagors have commenced construction of the Improvement [or engaged in any other activity described in subsection (b) above] prior to the initial advance under the Note and recording of this Mortgage, Mortgagors shall furnish Mortgagee with sworn affidavits and waivers of lien covering all work done through and including the dates of such initial disbursement and recording, all in form satisfactory to the Title Insurer and Mortgagee; (d) the construction of the Improvement shall commence pursuant to the terms of the Commitment Letter and shall be prosecuted with diligence and continuity, in a good and workmanlike manner, and in accordance with sound building and engineering practices, all applicable governmental requirements and the plans and specifications approved by Mortgagee; (e) Mortgagors shall complete construction of the Improvement on or before the expiration of six (6) months after the first disbursement under the Note, free and clear of all liens, claims and encumbrances, except those in favor of Mortgagee; and (f) Mortgagors shall not suffer or permit any mechanic's or materialmen's lien claims to be filed or otherwise asserted against the Mortgaged Premises or any funds due any contractors, and Mortgagors shall promptly discharge the same in case of the filing of any claims for lien or proceedings for the enforcement thereof (and in the event any such claim is filed or otherwise asserted against the Mortgaged Premises, Mortgagee will not be required to make any further advance under the Note until any such claim is either released or insured over by the Title Insurer on terms acceptable to Mortgagee).

3. Mortgagors shall keep the Mortgaged Premises continuously insured against loss or damage by fire, lightning, windstorm, malicious mischief, vandalism and extended coverage hazards, for full replacement

# UNOFFICIAL COPY

value. All casualty policies shall contain a standard mortgagee clause naming Mortgagee as first Mortgagee and loss payee, and Lender's long form loss payable endorsement in favor of Mortgagee. Mortgagors shall also provide Builder's Risk, Comprehensive General Liability Property Damage and Workmen's Compensation Policies naming Mortgagee as an additional insured. All policies of insurance shall be written by insurers acceptable to Mortgagee and have such monetary limits as Mortgagee shall require.

4. In the event of any loss or damage sustained by casualty for which insurance policies are in effect, the Mortgagee is authorized to adjust, compromise and collect all claims thereunder without the consent of the Mortgagors and to execute and deliver on behalf of Mortgagors all necessary proofs of loss, receipts, vouchers, releases and such other documents as shall be required by the insurers to be executed. At the election of Mortgagee, the proceeds of any insurance may be applied to the reduction of the indebtedness secured by this Mortgage, whether or not then due, or may be applied to the cost of building or restoring of the Improvement, or may be applied to both purposes in such proportion as the Mortgagee shall determine. That part of the Mortgaged Premises so damaged or destroyed shall be repaired or rebuilt, in accordance with plans and specifications therefor submitted to and approved by Mortgagee (which approval shall not be unreasonably withheld or delayed) and all life, safety and environmental regulations, laws, ordinances (including zoning), rules and regulations of governmental authorities having jurisdiction thereover, so as to be as similar, as is reasonably possible, to the condition which existed prior to such casualty.

5. Except for general real estate taxes and special assessments required to be paid by Mortgagors to Mortgagee in escrow in accordance with Section 6 hereof, Mortgagors shall pay directly all special taxes, water and sewer charges and all other taxes and charges on the Mortgaged Premises before any charge for nonpayment attaches or accrues, and to furnish the Mortgagee, upon request, with the original or duplicate receipts therefor.

6. Mortgagors agree to pay to Mortgagee each month at the time of and in addition to the monthly installments of principal and/or interest due under the Note a sum equal to one-twelfth (1/12) of the amount estimated by Mortgagee to be sufficient to enable Mortgagee to pay at least thirty (30) days before they become due and payable, all taxes, assessments and other similar charges levied against the Mortgaged Premises, and one-twelfth of the annual premiums for insurance required by this Mortgage. Mortgagee shall apply the sums to pay such taxes, charges and insurance premiums due and payable for the Mortgaged Premises. These sums may be commingled with general funds of Mortgagee, and no interest shall be payable thereon nor shall these funds be deemed to be held in trust for the benefit of Mortgagors. Upon notice at any time, the Mortgagors will, within ten (10) days, deposit such additional sum as may be required for the payment of increased taxes, assessments, charges or insurance premiums. In the event of foreclosure of this Mortgage, any of the moneys then remaining on deposit with the Mortgagee or its agent shall be applied against the indebtedness secured hereby prior to the commencement of foreclosure proceedings. The obligation of the Mortgagors to pay taxes, assessments, charges and insurance premiums shall not be affected or modified by the arrangements set out in this paragraph. Any default by the Mortgagors in the performance of the provisions of this paragraph shall constitute a default under this Mortgage. The Mortgagee is hereby authorized to pay all taxes, special

# UNOFFICIAL COPY

assessments, charges and insurance premiums as charged or billed without inquiry as to the accuracy or validity thereof.

7. In case of default hereunder, Mortgagee may, at its option, at any time make any payment or perform any act herein required by Mortgagors in any form and manner deemed expedient by Mortgagee, and Mortgagee may, at its option, make full or partial payments of principal or interest on prior encumbrances, if any, pay delinquent taxes and insurance premiums and purchase, discharge or settle any tax lien or any other prior lien or claim, redeem from any tax sale or forfeiture affecting the Mortgaged Premises or contest any tax or assessment. All monies paid or incurred by Mortgagee in connection therewith including costs and attorneys' fees and any other monies advanced by Mortgagee to protect the Mortgaged Premises shall be so much additional indebtedness secured hereby and shall be immediately due and payable by Mortgagors together with interest at the Default Rate defined herein.

8. In the event that the Mortgaged Premises or any part thereof is taken by condemnation, Mortgagee is hereby empowered to collect and receive any awards resulting therefrom ("Awards"), which shall, at the election of Mortgagee, be applied to the payment of the Note or any other indebtedness secured hereby, or on account of rebuilding or restoring that part of Mortgaged Premises not so taken or damaged. If Mortgagee elects to permit the use of Awards for rebuilding or restoration of the Mortgaged Premises, the Mortgaged Premises shall be so rebuilt or restored in accordance with plans and specifications therefor submitted to and approved by Mortgagee (which approval shall not be unreasonably withheld or delayed) and applicable laws, so as to be as similar, as is reasonably possible, to the condition which existed prior to condemnation. In the event the Awards are insufficient to pay for all costs of rebuilding or restoration, Mortgagors shall deposit with Mortgagee an amount equal to such excess costs prior to any disbursement.

9. To further secure payment of the Note, all other indebtedness secured hereby and performance of all of the terms, covenants, conditions and agreements contained herein, Mortgagors hereby sell, assign and transfer to Mortgagee all of their right, title and interest in and to all Leases and rentals, issues, proceeds and profits now due and which may hereafter become due pursuant thereto, it being the intention hereby to establish an absolute transfer and assignment thereof to Mortgagee. Mortgagors hereby irrevocably appoint Mortgagee their agent, in their name and stead (with or without taking possession of the Mortgaged Premises), to rent, lease or let all or any part of the Mortgaged Premises to any party or parties, at such rental and upon such terms as Mortgagee shall, in its discretion, determine and to collect all of said avails, rents, issues and profits arising from or accruing at any time hereafter and all presently due or which may hereafter become due pursuant to each and every Lease or any other tenancy existing or which hereafter exists on the Mortgaged Premises, with the same rights and powers and subject to the same rights and powers as Mortgagors would have. If no Event of Default under this Mortgage has occurred, Mortgagors shall have the right to collect all of the rents arising from Leases or renewals thereof. Upon an occurrence of an Event of Default, Mortgagee, at any time or times thereafter, may notify any and all of the tenants of the Leases that the Leases have been assigned to Mortgagee and Mortgagee may direct said tenants thereafter to make all rentals and payments due from tenants under the Leases directly to Mortgagee and shall have the right to enforce the terms of the Leases

# UNOFFICIAL COPY

and obtain payment of and collect the rents, by legal proceedings or otherwise in the name of the Mortgagors. Mortgagors will at all times deliver to the Mortgagee duplicate originals or certified copies of all leases, agreements and documents relating to the Mortgaged Premises and shall permit access by the Mortgagee to its books and records, insurance policies and other papers for examination and making copies and extracts thereof. The Mortgagee, its agents and designees shall have the right to inspect the Mortgaged Premises at all reasonable times and access thereto shall be permitted for that purpose.

10. Prior to execution of this Mortgage, Mortgagors shall obtain and deliver to Mortgagee a commitment for an ALTA Construction Loan Policy in the amount of \$375,000.00 issued by Title Insurer. All objections contained in the loan commitment shall be approved by and acceptable to Mortgagee.

11. This Mortgage is given to and shall secure not only existing indebtedness, but also future advances, whether such advances are obligatory or to be made at the option of the Mortgagee, or otherwise, as are made within twenty years from the date hereof, to the same extent as if future advances were made on the date of the execution of this Mortgage, although there may be no advance made at the time of execution of this Mortgage, and although there may be no indebtedness outstanding at the time any advance is made. The lien of this Mortgage shall be valid as to all such indebtedness and future advances from the time this Mortgage is filed for record in the office of the Recorder of Deeds or the Registrar of Title of the county where the Mortgaged Premises described herein are located. The total amount of indebtedness that may be so secured may increase or decrease from time to time, but the total unpaid balance so secured at any one time shall not exceed \$375,000.00 of principal, plus interest thereon, and any disbursements by Mortgagee made for the payment of taxes, special assessments or insurance on the Mortgaged Premises, with interest on such disbursements, and all costs of collection, including reasonable attorneys' fees.

12. If Mortgagors shall transfer, convey, alienate, pledge, hypothecate or mortgage the Mortgaged Premises or any part thereof, or any beneficiary of Mortgagors shall transfer, convey, alienate, pledge or hypothecate his beneficial interest or shall alter in any way any Trust Agreement under which Mortgagors hold title, or shall sell, transfer or assign the shares of stock of any corporate owner of the Mortgaged Premises or of any corporation which is the beneficiary of the Mortgagors, Mortgagee, at its option, may accelerate the maturity of the Note and declare it to be due and payable forthwith.

13. This Mortgage shall constitute a security agreement between Mortgagors and Mortgagee with respect to that portion of the Mortgaged Premises constituting property or interests in property, whether real or personal, including any and all sums deposited by Mortgagors and held by Mortgagee which are subject to the priority and perfection provisions of the Illinois Uniform Commercial Code. Therefore, to secure payment of the Note and all other indebtedness and obligations of Mortgagors hereunder, Mortgagors hereby grant to Mortgagee a security interest in the Mortgaged Premises and in all such deposits and agrees that, upon an Event of Default, Mortgagee shall have all of the rights and remedies of a secured party under the Illinois Uniform Commercial Code.

14. Mortgagors shall not and will not apply for or avail themselves of

# UNOFFICIAL COPY

any appraisalment, valuation, stay, extension or exemption laws, or any so-called "moratorium laws" now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but does hereby waive the benefit of such laws. MORTGAGORS EXPRESSLY WAIVE ANY AND ALL RIGHTS OF REDEMPTION UNDER ANY JUDGMENT OR DECREE OF FORECLOSURE OF THIS MORTGAGE, ON THEIR OWN BEHALF, ON BEHALF OF THE BENEFICIARIES OF MORTGAGORS, ON BEHALF OF ALL PERSONS CLAIMING OR HAVING AN INTEREST (DIRECT OR INDIRECT) BY, THROUGH OR UNDER MORTGAGORS AND ON BEHALF OF EACH AND EVERY PERSON ACQUIRING ANY INTEREST IN OR TITLE TO THE MORTGAGED PREMISES SUBSEQUENT TO THE DATE HEREOF, IT BEING THE INTENT OF MORTGAGORS HEREBY THAT ANY AND ALL SUCH RIGHTS OF REDEMPTION OF MORTGAGORS AND OF ALL OTHER PERSONS ARE AND SHALL BE DEEMED TO BE HEREBY WAIVED TO THE FULL EXTENT PERMITTED BY APPLICABLE LAWS.

This Mortgage shall secure, in addition to all other indebtedness and obligations herein recited, any loss, liability, penalty, damage or judgment including reasonable attorneys' fees incurred by Mortgagee by reason of any actual or alleged violation of any applicable statute, ordinance, rule or regulation for the protection of the environment which occurs upon the Mortgaged Premises or any adjoining parcels or by reason of imposition of any governmental lien for the recovery of environmental cleanup costs expended by reason of such violation ("Environmental Costs").

15. Any one or more of the following shall constitute an event of default ("Event of Default") hereunder: (a) default in the payment, when due, (whether by lapse of time, acceleration or otherwise) of the principal of or interest on the Note or of any other indebtedness hereby secured and such amount shall not be paid within ten (10) days of the due date; or (b) default for more than ten (10) days after written notice thereof is sent to Mortgagors in the observance or compliance with any other covenant, warranty, term or provision of this Mortgage or of any separate assignment of leases and/or rents securing the Note or of any other instrument or document securing the Note or relating thereto; or (c) any representation or warranty made by any Mortgagor herein or in any separate assignment of leases and/or rents securing the Note or in any other instrument or document securing the Note or relating thereto or in any statement or certificate furnished by it pursuant hereto or thereto proves to be untrue or misleading in any material respect as of the date of issuance or making thereof; or (d) the Mortgaged Premises or any part thereof, or the beneficial interest in any trust estate holding title thereto shall be assigned, sold, transferred or conveyed, whether voluntarily or involuntarily, by operation of law or otherwise, except for sales of obsolete, worn out or unusable fixtures or personal property which are concurrently replaced with similar fixtures or personal property at least equal in quality and condition to those sold and owned by Mortgagors free of any lien, charge or encumbrance other than the lien hereof; or (e) any indebtedness secured by a lien or charge on the Mortgaged Premises or any part thereof is not paid when due or proceedings are commenced to foreclose or otherwise realize upon any such lien or charge or to have a receiver appointed for the property subject thereto or to place the holder of such indebtedness or its representative in possession thereof; or (f) any Mortgagor shall die or become insolvent or bankrupt or admit in writing his or her inability to pay his or her debts as they mature or make an assignment for the benefit of creditors or apply for or consent to the appointment of a trustee, custodian or receiver for the major part of his or her property or such a trustee, custodian or receiver is appointed for any Mortgagor or for the major part of the Mortgaged

52511793



# UNOFFICIAL COPY

Premises and is not discharged within 30 days after such appointment, or bankruptcy, reorganization, arrangement, insolvency, readjustment, liquidation, dissolution or other proceedings for relief under any present or future bankruptcy laws or laws or other statute, law or regulation for the relief of debtors are instituted by or against any Mortgagor and if instituted against any such party is consented to or acquiesced in or are not dismissed within 30 days after such institution, or any Mortgagor takes any action in contemplation of or furtherance of any of the foregoing; or (g) there shall be any execution, attachment or levy on the Mortgaged Premises not stayed or released within 30 days; or (h) any event occurs or condition exists which is specified as an event of default in any separate assignment of leases and/or rents securing the Note or in any other instrument or document securing the Note or relating thereto; or (i) any financial or other information submitted by any Mortgagor to Mortgagee proves untrue in any material respect; or (j) the Mortgaged Premises are abandoned; or (k) Mortgagors shall fail or refuse to pay Environmental Costs as herein defined; or (l) any hazardous substances or wastes, industrial wastes, pollution control wastes or toxic substances, within the meaning of any applicable Federal, state or local environmental statute, ordinance, rule or regulation (collectively, "Hazardous Substances") shall be installed, used, generated, manufactured, produced, stored, released, discharged or disposed of on, under or about the Mortgaged Premises, or transported to or from the Mortgaged Premises, in violation of any Federal, state or local environmental statute, ordinance, rule or regulation; or (m) Mortgagors shall fail or refuse voluntarily to clean up and to bear the cost of cleaning up all Hazardous Substances on, under or about the Mortgaged Premises within 60 days after their discovery, or after receipt from any environmental agency or any other governmental unit or authority that a violation of any applicable Federal, state or local environmental statute, ordinance, rule or regulation has occurred; or (n) default in Mortgagors' observance or compliance with any covenant, provision or condition of the Commitment Letter, and such default shall continue uncured for 10 days after written notice thereof is sent by Mortgagee.

16. When any Event of Default has occurred and is continuing (regardless of the pendency of any proceeding which has or might have the effect of preventing Mortgagors from complying with the terms of this instrument and of the adequacy of the security for the Note) and in addition to such other rights as may be available under applicable law, but subject at all times to any mandatory legal requirements: (a) Mortgagee may, by written notice to Mortgagors, declare the Note and all other unpaid indebtedness and amounts hereby secured, including any interest then accrued thereon, to be forthwith due and payable, whereupon the same shall become and be forthwith due and payable, without other notice or demand of any kind; (b) Mortgagee shall, with respect to any part of the Mortgaged Premises constituting property of the type in respect of which realization on a lien or security interest granted therein is governed by the Illinois Uniform Commercial Code, have all the rights, options and remedies of a secured party under the Illinois Uniform Commercial Code; (c) Mortgagee may proceed to protect and enforce the rights of Mortgagee hereunder (i) by any action at law, suit in equity or other appropriate proceedings, whether for the specific performance of any agreement contained herein, or for an injunction against the violation of any of the terms hereof, or in aid of the exercise of any power granted hereby or by law; or (ii) by the foreclosure of this Mortgage in any manner permitted by law; (d) Mortgagee shall, as a matter of right, without giving bond to Mortgagors

# UNOFFICIAL COPY

or anyone claiming by, under or through it, and without regard to the solvency or insolvency of Mortgagors or the then value of the Mortgaged Premises, be entitled to have a receiver appointed of all or any part of the Mortgaged Premises and rents, issues and profits thereof, with such power as the court making such appointment shall confer, and Mortgagors hereby consent to the appointment of such receiver and shall not oppose any such appointment. Any such receiver may, to the extent permitted under applicable law, without notice, enter upon and take possession of the Mortgaged Premises or any part thereof by force, summary proceedings, ejection or otherwise, and may remove Mortgagors or other persons and any and all property therefrom, and may hold, operate and manage the same and receive all earnings, income, rents, issues and proceeds accruing with respect thereto or any part thereof, whether during the pendency of any foreclosure or until any right of redemption shall expire or otherwise; (e) Mortgagee may enter and take possession of the Mortgaged Premises or any part thereof and manage, operate, insure, repair and improve the same and take any action which, in Mortgagee's judgment, is necessary or proper to conserve the value of the Mortgaged Premises. Mortgagee may also take possession of, and for these purposes use, any and all personal property contained on or about the Mortgaged Premises and used in the operation, rental or leasing thereof or any part thereof. Mortgagee shall be entitled to collect and receive all earnings, revenues, rents, issues and profits of the Mortgaged Premises or any part thereof (and for such purpose Mortgagors do hereby irrevocably constitute and appoint Mortgagee their true and lawful attorney-in-fact for them and in their name, place and stead to receive, collect and receipt for all of the foregoing, Mortgagors irrevocably acknowledging that any payment made to Mortgagee hereunder shall be a good receipt and acquittance against Mortgagors to the extent so made) and to apply same to the reduction of the indebtedness hereby secured. The right to enter and take possession of the Mortgaged Premises and use any personal property thereon, to manage, operate and conserve the same, and to collect the rents, issues and profits thereof, shall be in addition to all other rights or remedies of Mortgagee hereunder or afforded by law, and may be exercised concurrently therewith or independently thereof. The expense (including any receiver's fees, counsel fees, costs and agent's compensation) incurred pursuant to the powers herein contained shall be so much additional indebtedness hereby secured which Mortgagors promise to pay upon demand together with interest at the Default Rate applicable to the Note at the time such expenses are incurred. Mortgagee shall not be liable to account to Mortgagors for any action taken pursuant hereto other than to account for any rents actually received by Mortgagee. Without taking possession of the Mortgaged Premises, Mortgagee may, in the event the Mortgaged Premises becomes vacant or is abandoned, take such steps as it deems appropriate to protect and secure the Mortgaged Premises (including hiring watchmen therefor) and all costs incurred in so doing shall constitute so much additional indebtedness hereby secured payable upon demand with interest thereon at the Default Rate applicable to the Note at the time such costs are incurred.

Upon the occurrence and during the continuance of an Event of Default, Mortgagors hereby further appoint Mortgagee, their true and lawful attorney-in-fact for them and in their name, place and stead to take any action and to execute any instrument which Mortgagee may deem necessary or advisable to accomplish the purpose of this Mortgage and the Commitment, including, but not limited to, the right to avail itself of and procure performance of existing contracts or let any contracts with the same contractors or others, complete construction of the Improvement

# UNOFFICIAL COPY

in the name of Mortgagors; to use unadvanced funds remaining under the Note to complete construction of the Improvement in substantially the manner contemplated by the plans and specifications submitted to Mortgagee; to retain or employ new contractors, architects and inspectors as shall be required for said purposes; to pay, settle, or compromise all existing bills and claims as may be necessary or desirable for the completion of the Improvement or for the clearance of title; to execute all applications and certificates in the name of the Mortgagors which may be required by any pertinent document; and to do any and every act which Mortgagors might do in their own behalf; to prosecute and defend all actions or proceedings in connection with the Improvement; to take action and require such performance as Mortgagee deems necessary under any of the bonds which may be in existence and to make settlements and compromises with the surety or sureties thereunder, and in connection therewith, to execute instruments of release and satisfaction; it being understood and agreed that this power of attorney shall be a power coupled with an interest and cannot be revoked. Notwithstanding the foregoing authorization, Mortgagee shall have no duty or obligation whatsoever with respect thereto.

17. All rights and remedies set forth in this Mortgage are cumulative and the holder of the Note and of every other obligation secured hereby may recover judgment herein, issue execution therefor, and resort to every other right or remedy available at law or in equity, without first exhausting and without affecting or impairing the security of any right or remedy afforded hereby.

18. Unless expressly provided in this Mortgage to the contrary, no consent or waiver, express or implied, by Mortgagee to or of any breach or default by Mortgagors in the performance by Mortgagors of any obligations contained herein shall be deemed a consent to or waiver by Mortgagee of such performance in any other instance or any other obligation hereunder. The failure of Mortgagee to exercise either or both of its remedies to accelerate the maturity of the indebtedness secured hereby and/or to foreclose the lien hereof following any Event of Default hereunder, or to exercise any other remedy granted to Mortgagee hereunder or under applicable law in any one or more instances, or the acceptance by Mortgagee of partial payments of such indebtedness shall neither constitute a waiver of any such Event of Default or of Mortgagee's remedies hereunder or under applicable law nor establish, extend or affect any grace period for payments due under the Note, but such remedies shall remain continuously in force. Acceleration of maturity, once claimed hereunder by Mortgagee, may at Mortgagee's option be rescinded by written acknowledgment to that effect by Mortgagee and shall not affect Mortgagee's right to accelerate maturity upon or after any future Event of Default.

19. Mortgagors shall pay Mortgagee's costs and expenses, title charges, search fees, appraisal fees, recording fees, costs of survey, attorneys' fees for negotiation, drafting, closing and protecting this Mortgage and loan documents and for advice in connection therewith.

20. Mortgagors represent and agree that the proceeds of the Note will be used for business purposes and that the Note and this Mortgage are exempt from limitations upon lawful interest, pursuant to the terms of the Illinois Revised Statutes, Chapter 17, Paragraph 6404.

21. All communications provided for herein shall be in writing and shall be deemed to have been given when delivered personally or three

# UNOFFICIAL COPY

(3) business days after mailing by United States certified mail, return receipt requested, first class mail, postage prepaid, addressed to the parties hereto at their addresses as shown at the beginning of this Mortgage or to such other and different address as Mortgagors or Mortgagee may designate pursuant to a written notice sent in accordance with the provisions hereof.

22. This Mortgage shall be construed in accordance with and governed pursuant to the laws of the State of Illinois. Whenever possible, each provision of this Mortgage shall be interpreted in such a manner as to be effective and valid pursuant to applicable law; provided, however, that if any part hereof shall be prohibited by or invalid thereunder, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remaining provisions of this Mortgage.

23. Whenever any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party; and all the covenants, promises and agreements in this Mortgage contained by or on behalf of Mortgagors, or by or on behalf of Mortgagee, shall bind and inure to the benefit of the respective heirs, executors, administrators, successors, vendees and assigns of such parties, whether so expressed or not. In addition, all covenants, promises and agreements of Mortgagors herein shall be binding upon any other parties claiming any interest in the Mortgaged Premises under Mortgagors. If more than one party signs this instrument as Mortgagors, then the term "Mortgagors" as used herein shall mean all of such parties, jointly and severally. In addition, the term "Mortgagors" shall include all persons claiming under or through Mortgagors and all persons liable for the payment of the indebtedness or any part thereof, whether or not such persons shall have executed the Note or this Mortgage.

IN WITNESS WHEREOF, Mortgagors have executed this Mortgage the day and year first above written.

  
Lonnie A. Peterson

  
Cynthia A. Peterson

52511793

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

STATE OF ILLINOIS     )  
                                  )   SS.  
COUNTY OF COOK        )

I, Pamela K. Seitz, a Notary Public in and for the said County, in the State aforesaid, DO CERTIFY that Lonnie A. Peterson and Cynthia A. Peterson, his wife, personally known to me to be the same persons whose names are subscribed to the foregoing instrument appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal this 15th day of June, 1992.

Pamela K. Seitz  
Notary Public

My Commission expires:



MAIL TO:

Affiliated Bank  
8700 N. Waukegan Road  
Morton Grove, Illinois 60053

Attn: Angela Baltas  
Documentation/Closing Dept.

BOX 333 - TH

52511793

UNOFFICIAL COPY

Property of Cook County Clerk's Office

