

UNOFFICIAL COPY

70.0895.2N1/06.M922

92528209

PREPARED BY AND AFTER
RECORDING RETURN TO:
William B. Phillips, Esq.
Hinshaw & Culbertson
222 North LaSalle Street
Chicago, Illinois 60601

FIRST MORTGAGE AND SECURITY AGREEMENT

THIS FIRST MORTGAGE AND SECURITY AGREEMENT made as of the 1st day of July, 1992, from AMALGAMATED TRUST AND SAVINGS BANK, not personally but solely as Trustee pursuant to Trust Agreement dated June 28, 1991 and known as Trust No. 5518 (the "Mortgagor") to COUNTRY LIFE INSURANCE COMPANY, an Illinois corporation (the "Mortgagee").

WITNESSETH:

WHEREAS, Mortgagor is indebted to Mortgagee for money borrowed in the principal sum of One Million Four Hundred Fifty Thousand Dollars (\$1,450,000.00) (the "Principal Amount") evidenced by an installment note, hereinafter designated as the "Note", dated of even date herewith, payable to the order of Mortgagee at the address specified in the Note in the Principal Amount, duly delivered to Mortgagee and drawing interest on the unpaid balance of the Principal Amount from date of disbursement until maturity at the rate set forth in Note, the principal and interest being payable in installments as set forth in Note, with the Principal Amount and accrued interest due and payable on the first (1st) day of August, 2012 (the "Maturity Date"), as will more fully appear by reference to the Note.

GRANTING CLAUSES

NOW, THEREFORE, to secure the payment of the Principal Amount, interest and premium, if any, payable under the Note, and to secure payment of all other sums which may be at any time due and owing to the Mortgagee or its successors and assigns under this Mortgage (herein referred to collectively as the "Indebtedness Hereby Secured"); and to secure the performance and observance of all the covenants, agreements and provisions contained in the Note, this Mortgage and the Other Loan Documents (as defined in the Note) and to charge the properties, interests and rights hereinafter described with such payment, performance and observance, and for other valuable considerations, the receipt and sufficiency of which is hereby acknowledged, the Mortgagor has mortgaged, granted, bargained, sold, conveyed, assigned, transferred, pledged and set over and DOES HEREBY MORTGAGE, GRANT, BARGAIN, SELL, CONVEY, ASSIGN, TRANSFER, PLEDGE AND SET OVER unto the Mortgagee, its successors and assigns forever, all of Mortgagor's right title and interest in and to the following described properties, rights and interests (herein collectively referred to as the "Mortgaged Property"):

Address of Property: 7150 West Archer Avenue, Chicago, Illinois
Permanent Tax Index: 19-07-323-048
19-07-323-055

1992 JUL 17 PM 3:43

92528209

92528209

105.00
70

19749761
02

79611e1 mpx

UNOFFICIAL COPY

GRANTING CLAUSE FIRST:

THE LAND located in Cook County, Illinois which is legally described on Exhibit "A" attached hereto and made a part hereof (the "Land");

GRANTING CLAUSE SECOND:

TOGETHER WITH all buildings, structures and improvements of every nature whatsoever now or hereafter situated on the Land, including all extensions, additions, improvements, betterments, renewals, substitutions and replacements to or for any such buildings, structures and improvements and all of the right, title and interest of the Mortgagor now or hereafter acquired in and to any of the foregoing (the "Improvements");

GRANTING CLAUSE THIRD:

TOGETHER WITH all easements, rights of way, strips and gores of land, streets, ways, alleys, sidewalks, vaults, passages, sewer rights, waters, water courses, water drainage and reservoir rights and powers (whether or not appurtenant), all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments, easements, franchises, appendages and appurtenances whatsoever, in any way belonging, relating or appertaining to the Land or the Improvements, whether now owned or hereafter acquired by the Mortgagor, including without limitation all existing and future mineral, oil and gas rights which are appurtenant to or which have been used in connection with the Land, all existing and future water stock relating to the Land or the Improvements, all existing and future share of stock respecting water and water rights pertaining to the Land or the Improvements or other evidence of ownership thereof, and the reversions and remainders thereof (the "Appurtenant Rights");

GRANTING CLAUSE FOURTH:

TOGETHER WITH all machinery, apparatus, equipment, fittings and fixtures of every kind and nature whatsoever, and all furniture, furnishings and other personal property now or hereafter owned by the Mortgagor and forming a part of, or used, usable or obtained for use in connection with the Land or the Improvements or any present or future operation, occupancy, maintenance or leasing thereof; including, but without limitation, any and all heating, ventilating and air conditioning equipment and systems, antennae, appliances, apparatus, awnings, basins, bathtubs, bidets, boilers, bookcases, cabinets, carpets, communication systems, coolers, curtains, dehumidifiers, dishwashers, disposals, doors, drapes, drapery rods, dryers, ducts, dynamos, elevators, engines, equipment, escalators, fans, fittings, floor coverings, furnaces, furnishings, furniture, hardware, heaters, humidifiers, incinerators, lighting, machinery, motors, ovens, pipes, plumbing and electric equipment, pool equipment, pumps, radiators, ranges, recreational facilities and equipment, refrigerators, screens, sprinklers, stokers, stoves, shades, shelving, sinks, security systems, toilets, ventilators, wall coverings, washers, windows, window covering, wiring and all extensions, renewals or replacements thereof or substitutions therefor or additions thereto, whether or not the same are or shall be attached to the Land or the Improvements in any manner (the "Fixtures"); it being agreed that all of said property owned by the Mortgagor

UNOFFICIAL COPY

and placed on the Land or on or in the Improvements (whether affixed or annexed thereto or not) shall, so far as permitted by law, conclusively be deemed to be real property and conveyed hereby for purposes of this Mortgage.

GRANTING CLAUSE FIFTH:

TOGETHER WITH all existing and future goods and items of personal property located on the Land or in the Improvements which are now or in the future owned by the Mortgagor and used, usable or obtained for use in connection with the Land or the Improvements or any present or future operation, occupancy, maintenance or leasing thereof, or any construction on or at the Land or the Improvements, but which are not effectively made Fixtures under Granting Clause Fourth; including, but not limited to, building materials, supplies, equipment and inventories located on the Premises or elsewhere and all extensions, renewals or replacements thereof or substitutions therefor or additions thereto (the "Personal Property");

GRANTING CLAUSE SIXTH:

TOGETHER WITH all right, title and interest which the Mortgagor now has or hereafter may acquire in and to all leases and other agreements now or hereafter entered into for the occupancy or use of the Land, the Appurtenant Rights, the Improvements, the Fixtures and the Personal Property (herein collectively referred to as the "Premises") or any portion thereof, whether written or oral (herein collectively referred to as the "Leases") and all right, title and interest which the Mortgagor now has or hereafter may acquire in and to any bank accounts, security deposits, and any and all other amounts held as security under the Leases, reserving to the Mortgagor any statutory rights;

GRANTING CLAUSE SEVENTH:

TOGETHER WITH any and all Awards and Insurance Proceeds, as hereinafter respectively defined, or proceeds of any sale, option or contract to sell the Premises or any portion thereof (provided that no other right, consent or authority to sell the Mortgaged Property or any portion thereof shall be inferred or deemed to exist by reason hereof); and the Mortgagor hereby authorizes, directs and empowers the Mortgagee, at its option, on the Mortgagor's behalf, or on behalf of the successors or assigns of the Mortgagor, to adjust, compromise, claim, collect and receive such proceeds; to give acquittances therefor; and, after deducting expenses of collection, including reasonable attorneys' fees, costs and disbursements, to apply the Net Proceeds, as hereinafter defined, to the extent not utilized for the Restoration of the Mortgaged Property as provided in Section 11 hereof, upon the Indebtedness Hereby Secured as provided herein, notwithstanding the fact that the same may not then be due and payable or that the Indebtedness Hereby Secured is otherwise adequately secured; and the Mortgagor agrees to execute and deliver from time to time such further instruments as may be reasonably requested by the Mortgagee to confirm such assignment to the Mortgagee of any such proceeds;

GRANTING CLAUSE EIGHTH:

UNOFFICIAL COPY

TOGETHER WITH all estate, right, title and interest, homestead or other claim or demand, as well in law as in equity, which the Mortgagor now has or hereafter may acquire of, in and to the Premises, or any part thereof, and any and all other property of every kind and nature from time to time hereafter (by delivery or by writing of any kind) conveyed, pledged, assigned or transferred as and for additional security hereunder by the Mortgagor or by anyone on behalf of the Mortgagor to the Mortgagee;

TO HAVE AND TO HOLD the Mortgaged Property, unto the Mortgagee, and its successors and assigns, IN FEE SIMPLE forever; subject, however, to the Permitted Encumbrances which are set forth on Exhibit "B" attached hereto (the "Permitted Encumbrances");

UPON CONDITION that, subject to the terms hereof and until the occurrence of an Event of Default hereunder, the Mortgagor shall be permitted to possess and use the Mortgaged Property, and collect all rents due under the Leases and profits from the Mortgaged Property, or otherwise;

SUBJECT to the covenants and conditions hereinafter set forth.

PROVIDED, NEVERTHELESS, that if the Mortgagor shall pay in full when due the Indebtedness Hereby Secured and shall duly and timely perform and observe all of the covenants and conditions herein required to be performed and observed by the Mortgagor, then the Mortgagee shall promptly execute and deliver to the Mortgagor such instruments as may be reasonably requested by the Mortgagor which are sufficient to release this Mortgage.

NOTWITHSTANDING any provision hereof to the contrary, this Mortgage shall secure all future advances made by the Mortgagee in connection with the Mortgaged Property within forty (40) years from the date hereof, whether such advances are obligatory or are made at the option of the Mortgagee or otherwise and whether or not such advances are evidenced by the Note, to the same extent as if such advances were made on the date of execution and delivery hereof, with interest on such future advances at the Default Rate (as defined in the Note); provided that the aggregate outstanding balance of the Indebtedness Hereby Secured shall at no time exceed Three Million Dollars (\$3,000,000.00). All covenants and agreements contained in this Mortgage shall be equally applicable to future advances.

THE MORTGAGOR FURTHER COVENANTS AND AGREES AS FOLLOWS:

92528209

UNOFFICIAL COPY

SECTION 1

Representations of Mortgagor

Mortgagor hereby represents to Mortgagee as follows:

(a) Mortgagor (i) is an Illinois lanc trust, validly existing and in good standing under the laws of the State of Illinois and has complied with all conditions prerequisite to its doing business in the State of Illinois; (ii) has the power and authority to own its properties and to carry on its business as now being conducted; (iii) is qualified to do business in every jurisdiction in which the nature of its business or its properties makes such qualification necessary; and (iv) to the best of Mortgagor's knowledge, is in compliance with all laws, regulations, ordinances and orders of public authorities applicable to it.

(b) The Mortgagor has good and marketable title to an indefeasible fee simple estate in the Premises, subject to no liens, charges or encumbrances other than the Permitted Encumbrances, that it has good right and lawful authority to mortgage the Mortgaged Property in the manner and form herein provided; that this Mortgage is and shall remain a valid and enforceable first lien on the Mortgaged Property subject only to the Permitted Encumbrances; that Mortgagor and its successors and assigns shall defend the same and the priority of this lien forever against the lawful claims and demands of all persons whomsoever, and that this covenant shall not be extinguished by any foreclosure hereof but shall run with the land.

(c) Mortgagor has and shall maintain title to the Collateral including any additions or replacements thereto free of all security interests, liens and encumbrances, other than the security interest hereunder, and has good right to subject the Collateral to the security interest hereunder.

(d) The Mortgagor shall, so long as it is owner of the Premises, do all things reasonably necessary to preserve franchises, rights and privileges as a legal entity under the laws of the state of its formation and shall comply with all regulations, rules, ordinances, statutes, orders and decrees of any governmental authority or court applicable to the Mortgagor or to the Premises or any part thereof.

SECTION 2

Payment of Indebtedness; Performance of Covenants, Maintenance, Repair, Compliance with Law, Use, Etc.

(a) The Mortgagor shall (i) pay the Indebtedness Hereby Secured when due; and (ii) duly and punctually perform and observe all of the covenants and conditions to be performed or observed by the Mortgagor as provided in the Note, this Mortgage and the Other Loan Documents.

(b) The Mortgagor shall (i) promptly repair, restore, replace or rebuild any portion of the Premises which may be damaged or destroyed whether or not Insurance Proceeds are available or sufficient for that purpose in accordance with Section 9 hereof;

UNOFFICIAL COPY

(ii) keep the Premises in good condition and repair, free from waste; (iii) pay all operating costs and expenses of the Premises when due; (iv) comply with all legal requirements applicable to all or any portion of the Premises, or the use and occupancy thereof (subject to the right of the Mortgagor to contest the enforceability or applicability of any such legal requirements in good faith, diligently and at its expense by appropriate proceedings which shall not subject the Mortgagor or the Mortgagee to any risk of civil or criminal liability and which shall operate during the pendency thereof to prevent the imposition or foreclosure of any lien upon, or any interference with the availability, use or occupancy of, the Mortgaged Property or any part thereof), and observe and comply with any conditions and requirements necessary to preserve and extend any and all rights, licenses, permits (including without limitation zoning variances, special exceptions and nonconforming uses), privileges, franchises and concessions that are applicable to all or any portion of the Premises or the use and occupancy thereof; (v) refrain from any action and correct any condition known to the Mortgagor which would materially increase the risk of fire or other hazard to the Premises or any portion thereof; and (vi) cause the Premises to be managed in a competent and professional manner.

(c) Without the prior written consent of the Mortgagee, which consent shall not be unreasonably withheld or delayed, the Mortgagor shall not cause, suffer or permit (i) any material alteration of the Premises, except as required by any applicable legal requirement or leases; (ii) any change in the intended use or occupancy of the Premises, including without limitation any change which would increase any fire or other hazard; (iii) any change in the identity of the Mortgagor or the person or firm responsible for managing the Premises; (iv) any modification of the licenses, permits, privileges, franchises, covenants, conditions or declarations of use applicable to the Premises, except as required to operate the Premises in the manner required hereunder; (v) except as provided in Section 15, any sale, alienation or further encumbrance of the Mortgaged Property or any portion thereof or interest therein; or (vi) the conversion of the Premises to a cooperative form of ownership or the conversion of the Premises to a condominium form of ownership.

SECTION 3

Liens, Contest and Defense of Title

(a) The Mortgagor shall not create or suffer or permit any lien, charge or encumbrance to attach to or be filed against the Mortgaged Property or any part thereof, or interest thereon, or any other rights and properties conveyed, mortgaged, transferred and granted hereunder, whether such lien, charge or encumbrance is on a parity, inferior or superior to the lien of this Mortgage, including liens for labor or materials with respect to the Premises ("Mechanic's Liens").

(b) Notwithstanding paragraph (a) of this Section, the Mortgagor may in good faith and with reasonable diligence contest the validity or amount of any Mechanic's Liens and defer payment and discharge thereof during the pendency of such contest, provided that: (i) such contest shall prevent the sale or forfeiture of the Mortgaged Property, or any part thereof or any interest therein, to satisfy such Mechanic's Liens and shall not result in a forfeiture or impairment of the lien of this Mortgage; and (ii) within twenty (20) days after the Mortgagor has been notified of the filing of any such Mechanic's Liens, the

UNOFFICIAL COPY

Mortgagor shall have notified the Mortgagee in writing of the Mortgagor's intention to contest such Mechanic's Liens, or to cause such other party to contest such Mechanic's Liens, and shall have obtained a title insurance endorsement over such Mechanic's Liens in form and substance reasonably satisfactory to the Mortgagee, insuring the Mortgagee against loss or damage by reason of such Mechanic's Liens; provided that in lieu of such title insurance endorsement the Mortgagor may deposit and keep on deposit with the Mortgagee (or such depository as may be designated by the Mortgagee) a sum of money sufficient, in the reasonable judgment of the Mortgagee to pay in full such Mechanic's Liens and all interest thereon. Any such deposits are to be held without any allowance of interest and may be used by the Mortgagee in its sole discretion to protect the priority of this Mortgage. In case the Mortgagor shall fail to maintain such title insurance or deposit, or to prosecute or cause the prosecution of such contest with reasonable diligence, or to pay or cause to be paid the amount of the Mechanic's Lien, plus any interest finally determined to be due upon the conclusion of such contest; then the Mortgagee may, at its option and after prior written notice to Mortgagor, apply any money and liquidate any securities then on deposit with the Mortgagee (or other depository designated by the Mortgagee) in payment of or on account of such Mechanic's Liens, or that part thereof then unpaid, together with all interest thereon, according to any written bill, notice or statement without inquiring into the amount, validity or enforceability thereof. If the amount of money so deposited shall be insufficient for the payment in full of such Mechanic's Liens, together with all interest thereon, then the Mortgagor shall forthwith, upon demand, deposit with the Mortgagee (or other depository designated by the Mortgagee) the sum which shall be necessary to make such payment in full. If a Mechanic's Lien claim is ultimately resolved in the claimant's favor, then the monies so deposited (provided no Event of Default shall then exist) shall be applied in full payment of such Mechanic's Lien or that part thereof then unpaid, together with all interest thereon when the Mortgagee has been furnished with satisfactory evidence of the amount of payment to be made. Any excess monies remaining on deposit with the Mortgagee (or other depository) under this Section 3(b) shall be paid to the Mortgagor, provided that no Event of Default shall then exist.

(c) If the lien and security interest of the Mortgagee in or to the Mortgaged Property, or any part thereof, shall be endangered or shall be attacked, directly or indirectly, the Mortgagor shall immediately notify the Mortgagee and shall appear in and defend any action or proceeding purporting to affect the Mortgaged Property, or any part thereof, and shall file and prosecute such proceedings and take all actions necessary to preserve and protect such title, lien and security interest in and to the Mortgaged Property.

UNOFFICIAL COPY

SECTION 4

Payment and Contest of Taxes

(a) The Mortgagor shall pay or cause to be paid 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 levied or assessed against the Mortgaged Property, or any part thereof, or any interest therein, or any income or revenue therefrom, or any obligation or instrument secured hereby, including without limitation any tax referred to in Section 5(a) hereof, and all installments thereof ("Taxes"), on or before the date such Taxes are due; and the Mortgagor shall discharge any claim or lien relating to Taxes upon the Premises. The Mortgagor shall provide the Mortgagee with copies of paid receipts for Taxes within thirty (30) days after the due dates thereof.

(b) Notwithstanding paragraph (a) of this Section, the Mortgagor may, in good faith and with reasonable diligence, contest or cause to be contested the validity or amount of any such Taxes, provided that: (i) such contest shall prevent the collection of the Taxes so contested and the sale or forfeiture or impairment of the lien of this Mortgage; (ii) the Mortgagor shall have notified the Mortgagee in writing of the Mortgagor's intention to contest such Taxes before any increase by interest, penalties or costs; and (iii) the Mortgagor shall have deposited or caused to be deposited with the Mortgagee (or other depository designated by the Mortgagee) a sum of money or other security reasonably acceptable to the Mortgagee which, when added to the monies or other security, if any, deposited with the Mortgagee (or other depository designated by the Mortgagee) pursuant to Section 8 hereof, shall be sufficient, in the Mortgagee's reasonable judgment, to pay in full such contested Taxes and all penalties and interest which are or might become due thereon. If the Mortgagor fails to prosecute such contest with reasonable diligence or fails to maintain sufficient funds on deposit as hereinabove provided, the Mortgagee may, at its option and after written notice to Mortgagor, liquidate any securities and apply the monies then on deposit with the Mortgagee (or other depository), in payment of, or on account of, such Taxes, or any portion thereof then unpaid, including all penalties and interest thereon, according to any written bill, notice or statement, without inquiry as to the amount, validity or enforceability thereof. If the amount of money and any such security so deposited shall (in the Mortgagee's reasonable judgment) at any time be insufficient for the payment in full of such Taxes, together with all penalties and interest which are or might become due thereon, the Mortgagor shall forthwith, upon demand, either deposit with the Mortgagee (or other depository designated by the Mortgagee) a sum (or such other security as shall be reasonably satisfactory to Mortgagee) which when added to the funds then on deposit, shall (in the Mortgagee's reasonable judgment) be sufficient to make such payment in full, or, if the Mortgagee (or other depository) has applied funds so deposited on account of such Taxes, restore such deposit to an amount reasonably satisfactory to the Mortgagee. After final disposition of such contest and upon the Mortgagor's written request and delivery to the Mortgagee of an official bill for such Taxes, the Mortgagee (or other depository) shall liquidate any securities and apply the monies, if any, then on deposit under this Section 4 to the payment of such Taxes and the balance, if any, in excess of the amount required to be on deposit with the Mortgagee (or other depository) under Section 8 hereof, shall be refunded to the Mortgagor after such final disposition, provided that no Event of Default shall then exist.

UNOFFICIAL COPY

SECTION 5

Change in Tax Laws

(a) If by the laws of the United States of America, or of any state or municipality having jurisdiction over the Mortgagee, the Mortgagor or the Mortgaged Property, any tax is imposed or becomes due in respect of the Note or this Mortgage (excluding income, excise or franchise taxes imposed upon the Mortgagee, except as provided in paragraph (c) below), or any liens on the Mortgaged Property created thereby, then the Mortgagor shall pay such tax in the manner required by such law.

(b) If any law, statute, rule, regulation, order or court decree effects a deduction from the value of the Mortgaged Property for the purpose of taxation by creating any lien thereon, or imposing upon the Mortgagee any liability for the payment of all or any part of the Taxes required to be paid by the Mortgagor, or changing in any way the laws relating to the taxation of mortgages or deeds of trusts or debts secured by mortgages or deeds of trust or the interest of the Mortgagee in the Mortgaged Property, or the manner of collection of Taxes so as to adversely affect this Mortgage, the Indebtedness Hereby Secured, or the Mortgagee, then, and in any such event, the Mortgagor, upon demand by the Mortgagee, shall pay such Taxes, or reimburse the Mortgagee therefor on demand, unless the Mortgagee determines, in the Mortgagee's reasonable judgment, that such payment or reimbursement by the Mortgagor is unlawful or that the payment might, in the Mortgagee's judgment, constitute usury or render the Indebtedness Hereby Secured wholly or partially usurious; in which event the Mortgagee may elect to declare the Indebtedness Hereby Secured to be due and payable within one hundred eighty (180) days after written demand by the Mortgagee to the Mortgagor, without payment of the Prepayment Premium (as hereinafter defined).

(c) Nothing contained herein shall require the Mortgagor to pay any income, franchise or excise tax imposed upon the Mortgagee, excepting only such income, franchise or excise tax which may be levied against the income of the Mortgagee as a complete or partial substitute for Taxes required to be paid by the Mortgagor hereunder.

SECTION 6

Insurance Coverage

The Mortgagor, at its sole expense, shall continuously maintain in force the following described policies of insurance (the "Insurance Policies") with respect to the Premises:

(a) All-risk property insurance against loss and/or damage due to perils, including but not limited to perils such as fire, windstorm, smoke, lightning, explosion, riot, hail, vandalism, malicious mischief, collapse, and other perils not customarily excluded from an "all-risk" policy in amounts not less than One Million Four Hundred Fifty Thousand Dollars (\$1,450,000.00), written on a replacement cost basis evidenced by a "replacement cost" endorsement and an "agreed amount" endorsement.

UNOFFICIAL COPY

(b) Comprehensive general public liability and property damage insurance protecting against death, bodily injury and property damage, in an amount of not less than \$1,000,000.00 per occurrence.

(c) Flood insurance if the Premises is located in an area designated as a special flood hazard area pursuant to the Flood Disaster Protection Act of 1973, as amended, or other applicable law with such insurance to be in at least the amount available under the National Flood Insurance Program and if available under policies issued by other sources then in such additional amounts as the Mortgagee may reasonably require.

(d) Rental insurance with an "agreed amount" endorsement in an amount equal to the aggregate of six (6) months principal and interest payments on the Note plus the amount of the annual Taxes and Premiums (as hereinafter defined).

(e) Such other insurance coverages, customary for prudent owners of properties similar to the Premises, as the Mortgagee may reasonably require.

SECTION 7

Insurance Policies

(a) All Insurance Policies shall be with such companies, for such term, and in such form and content, as may be reasonably satisfactory to the Mortgagee. All Insurance described in Section 6 shall name the Mortgagor as an additional named insured. Any insurance required hereunder may be in the form of blanket insurance policies, subject to the consent of the Mortgagee, which consent shall not be unreasonably withheld.

(b) The insurance policies, if appropriate, must insure the interest of the Mortgagee in the Premises as mortgagee and secured party; must contain a waiver of the right of subrogation reasonably satisfactory to the Mortgagee and a provision that the interest of the Mortgagee shall not be invalidated by any act or omission of the Mortgagor or owner of the Premises, or any part thereof; and must include a standard non-contributory mortgagee loss payable clause in favor of the Mortgagee, as its interest may appear. Any liability insurance policy shall name the Mortgagee as an "additional insured". All insurance policies shall contain a provision that the Mortgagee shall receive not less than thirty (30) days prior written notice before any expiration, cancellation or modification of, or material reduction in coverage under, such policies and shall provide that no claims shall be paid thereunder without at least ten (10) days prior written notice to the Mortgagee. In all cases the Mortgagor shall immediately give notice to the Mortgagee of any notice received by the Mortgagor of any expiration, cancellation or modification of, or material reduction in coverage under, any such policy. The requirements of this paragraph (b) shall apply to any separate policies of insurance taken out by the Mortgagor concurrent in form or contributing in the event of loss with the Insurance Policies.

(c) All insurance premiums shall be paid in full in advance prior to the due date and duplicate originals or certified copies of all Insurance Policies with premiums prepaid (accompanied by paid premium receipts) shall be delivered to the Mortgagee prior to the initial disbursement of the Indebtedness Hereby Secured and thereafter, in the case of

UNOFFICIAL COPY

Insurance Policies about to expire, not less than thirty (30) days prior to such expiration date.

(d) Approval by the Mortgagee of any Insurance Policies shall not be deemed a representation by the Mortgagee as to the adequacy of coverage of such Insurance Policies or the solvency of the insurer.

(e) If the Mortgagor fails to procure, pay the premiums for, or deliver to the Mortgagee any of the Insurance Policies or renewals as required herein, upon written notice to Mortgagor, the Mortgagee may elect, but shall not be obligated, to obtain such insurance and pay the premiums therefor. The Mortgagor shall pay to the Mortgagee on demand any premiums so paid with interest thereon at the Default Rate, from the time of the advance for such payment by the Mortgagee, and said advance and interest shall be part of the Indebtedness Hereby Secured.

(f) In the event of the foreclosure of this Mortgage, or other transfer of title to the Premises, or any part thereof, by non-judicial foreclosure sale or deed in lieu of foreclosure, the purchaser of the Premises, or such part thereof, shall succeed to all of the Mortgagor's rights, including any rights to unexpired insurance and unearned or returnable premiums, in and to all Insurance Policies required by this Section and Section 6 hereof, subject to limitations on assignment of blanket policies, and limited to such rights as relate to the Premises or such part thereof. If the Mortgagee acquires title to the Premises, or any part thereof, in any manner, it shall thereupon (as between the Mortgagor and the Mortgagee) become the sole and absolute owner of the Insurance Policies and all proceeds payable thereunder with respect to the Premises, or such part thereof, required by this Section, with the sole right to collect and retain all unearned or returnable premiums thereon with respect to the Premises, or such part thereof, if any.

SECTION 8

Deposits for Taxes and Insurance Premiums

(a) To assure the payment of Taxes and all premiums for Insurance Policies required to be maintained hereunder ("Premiums"), as and when the same shall become due and payable, the Mortgagor shall deposit with the Mortgagee (or such other depository as the Mortgagee shall direct) on each monthly payment date under the Note, an amount equal to one-twelfth (1/12) of the Taxes and Premiums to become due upon or with respect to the Premises; provided that for the first such deposit, the Mortgagor shall deposit an amount which, when added to the aggregate amount of monthly deposits to be made hereunder with respect to Taxes and Premiums, will provide (without interest) a sufficient fund to pay such Taxes and Premiums one month prior to the date when they are due and payable. The amounts of such deposits (herein generally called "Tax and Insurance Deposits") shall be based upon the Mortgagee's estimate as to the annual amount of Taxes and Premiums. The Mortgagor shall promptly upon the demand of the Mortgagee make such additional Tax and Insurance Deposits as the Mortgagee may from time to time reasonably require due to (i) failure of the Mortgagee to require, or failure of the Mortgagor to make, Tax and Insurance Deposits in previous months; (ii) under-estimation of the amounts of Taxes and/or Premiums; (iii) the particular due dates and amounts of

UNOFFICIAL COPY

Taxes and/or Premiums; or (iv) application of the Tax and Insurance Deposits pursuant to Section 8(c) hereof. All Tax and Insurance Deposits shall be held in a non-interest bearing account.

(b) If Mortgagor is making Tax and Insurance Deposits, then upon presentation to the Mortgagee by the Mortgagor of proper bills for the payment of Taxes and Premiums when due, the Mortgagee will pay such Taxes and Premiums out of the Tax and Insurance Deposits then held by the Mortgagee (or other depository) or, upon presentation of receipted bills therefor, to reimburse the Mortgagor for such payments made by the Mortgagor provided no Event of Default shall then exist hereunder. If the total Tax and Insurance Deposits on hand shall not be sufficient to pay all of the Taxes and Premiums when the same shall become due, then the Mortgagor shall pay to the Mortgagee (or other depository) on written demand by the Mortgagee the amount necessary to make up the deficiency. Notwithstanding anything herein contained to the contrary, the Mortgagee, or its successors and assigns, shall not be obligated to apply any Tax and Insurance Deposits to the payment of any Taxes or Premiums unless and until the Mortgagor presents a written requisition accompanied by proper bills for the payment of Taxes or Premiums which are then due and for the payment of which such Tax and Insurance Deposits were made, and no Event of Default shall exist hereunder.

(c) Upon the occurrence of an Event of Default under this Mortgage, the Mortgagee may, at its option, without being required to do so, apply any Tax and Insurance Deposits on hand to the payment of any of the Indebtedness Hereby Secured or to pay or perform any obligations of the Mortgagor which shall then be in default hereunder, in such order and manner as the Mortgagee in its sole discretion may elect. When the Indebtedness Hereby Secured has been fully paid, any remaining Tax and Insurance Deposits shall be paid to the Mortgagor, or to the grantee or purchaser of the Premises following any judicial foreclosure sale or conveyance by deed in lieu of foreclosure. All Tax and Insurance Deposits and any other monies on deposit pursuant to the terms of this Mortgage are hereby pledged as additional security for the Indebtedness Hereby Secured, and shall be held irrevocably by the Mortgagee (or other depository) to be applied for the purposes for which made as herein provided, and shall not be subject to the direction or control of the Mortgagor.

UNOFFICIAL COPY

SECTION 2: _____

Casualty Loss; Proceeds of Insurance

(a) The Mortgagor will give the Mortgagee prompt written notice of any loss or damage to the Premises, or any part thereof, by fire or other casualty.

(b) In case of loss or damage covered by any one of the Insurance Policies, as long as no Event of Default has occurred, or no event has occurred which with the giving of notice (if required) and/or the passage of time would constitute an Event of Default, the Mortgagor is hereby authorized, with the consent of the Mortgagee, (which consent shall not be unreasonably withheld or delayed) to settle and adjust any claim under such Insurance Policies. If an Event of Default has occurred, or an event has occurred which with the giving of notice (if required) and/or the passage of time would constitute an Event of Default then the Mortgagee is hereby authorized to settle and adjust any claim under such Insurance Policies (and after the entry of a decree of foreclosure, or a sale or transfer pursuant thereto; or in lieu thereof, the decree creditor or such purchaser or transferee, as the case may be are hereby authorized to settle and adjust any claim under such Insurance Policies) without the consent of the Mortgagor, and the Mortgagee shall, and is hereby authorized to, collect and receipt for any and all proceeds payable under such Insurance Policies ("Insurance Proceeds"). All reasonable costs and expenses incurred by the Mortgagee in the adjustment and collection of any such Insurance Proceeds (including without limitation reasonable attorneys' fees and expenses) shall be so much additional Indebtedness Hereby Secured, and shall be reimbursed to the Mortgagee upon demand or may be paid and deducted by the Mortgagee from such Insurance Proceeds prior to any other application thereof. Each insurance company which has issued an Insurance Policy covering any loss or damage to the Premises (including without limitation loss of rents or business interruption coverage) is hereby authorized and directed to make payment for all losses covered by an Insurance Policy to the Mortgagee alone, and not to the Mortgagor and the Mortgagee jointly.

(c) In the event any insurance company fails to disburse directly and solely to the Mortgagee but disburses instead either solely to the Mortgagor or to the Mortgagor and the Mortgagee jointly, the Mortgagor shall receive such Insurance Proceeds in trust for the benefit of the Mortgagee and shall immediately endorse and transfer the Insurance Proceeds to the Mortgagee upon demand. If the Mortgagor shall fail or refuse to endorse and transfer such Insurance Proceeds to the Mortgagee upon demand, as aforesaid, the Mortgagee may execute such endorsements or transfer for and in the name of the Mortgagor and the Mortgagor hereby appoints the Mortgagee as agent and attorney-in-fact of the Mortgagor with power of substitution so to do, which power of attorney shall be irrevocable and coupled with an interest.

(d) As long as no Event of Default has occurred, and no event has occurred which with the giving of notice (if required) and/or passage of time would constitute an Event of Default, and the loss or damage to the Premises occurs prior to the twentieth (20th) Loan Year (as hereinafter defined), and neither the Mortgagor nor tenants leasing more than twenty-five per cent (25%) of the rentable area of the Premises have elected to cancel the leases of the Premises, all Insurance Proceeds shall be used to reimburse the

UNOFFICIAL COPY

Mortgagor for the cost of the restoration, repair, replacement or rebuilding of the Premises ("Restoration"), as provided herein and in Section 11 hereof. If an Event of Default has occurred, or an event has occurred which with the giving of notice (if required) and/or passage of time would constitute an Event of Default, or the loss or damage to the Premises occurs during the twentieth (20th) Loan Year, or the Mortgagor or tenants leasing more than twenty-five per cent (25%) of the rentable area of the Premises have elected to cancel the leases of the Premises, then the Insurance Proceeds shall, at the option of the Mortgagee, be applied to prepayment of the Indebtedness Hereby Secured as provided in Section 11 hereof.

(c) So long as any Indebtedness Hereby Secured shall be outstanding and unpaid, and whether or not Insurance Proceeds are sufficient or available therefor, the Mortgagor shall promptly commence and complete with all reasonable diligence the Restoration of the Premises as early as possible to the same value, condition and character which existed immediately prior to such loss or damage in accordance with plans and specifications approved by the Mortgagee for any Restoration involving costs in excess of \$50,000.00 ("Restoration Plans") and in compliance with all legal requirements. Any Restoration shall be effected in accordance with procedures to be first submitted to and approved by the Mortgagee as provided in Section 11 hereof. The Mortgagor shall pay all costs of such Restoration.

SECTION 10

Condemnation and Eminent Domain

(a) Any and all awards (the "Awards") heretofore or hereafter made or to be made to the Mortgagor (or any subsequent owner of the Premises, or any part thereof), by any governmental or other lawful authority for the taking, by condemnation or eminent domain, of all or any part of the Premises (including any award from the United States government at any time after the allowance of a claim therefor, the ascertainment of the amount thereto, and the issuance of a warrant for payment thereof), are hereby assigned by the Mortgagor to the Mortgagee, which Awards the Mortgagee is hereby authorized to collect and receive from the condemnation authorities. Prior to the occurrence of an Event of Default, or occurrence of any event which with the giving of notice (if required) and/or the passage of time would constitute an Event of Default, the Mortgagor is hereby authorized to appear in and prosecute any action or proceeding to enforce any such cause of action and, with the prior written consent of the Mortgagee, which consent shall not be unreasonably withheld, to make any compromise or settlement in connection therewith and to give appropriate receipts and acquittances therefor. The Mortgagor shall give the Mortgagee immediate notice of the actual or threatened commencement of any condemnation or eminent domain proceedings affecting all or any part of the Premises and shall deliver to the Mortgagee copies of any and all papers served in connection with any such proceedings. All reasonable costs and expenses incurred by the Mortgagee in the adjustment and collection of any such Awards (including without limitation reasonable attorneys' fees and expenses) shall be so much additional Indebtedness Hereby Secured, and shall be reimbursed to the Mortgagee upon demand or may be paid and deducted by the Mortgagee from any Award prior to any other application thereof. The Mortgagor further agrees to make, execute and deliver to the Mortgagee, at any time upon request, free, clear,

UNOFFICIAL COPY

and discharged of any encumbrance of any kind whatsoever (other than Permitted Encumbrances), any and all further assignments and other instruments deemed necessary by the Mortgagee for the purpose of validly and sufficiently assigning all Awards and other compensation heretofore and hereafter made to the Mortgagor for any taking, either permanent or temporary, under any such proceeding.

(b) As long as no Event of Default has occurred, or no event has occurred which with the giving of notice (if required) and/or passage of time would constitute an Event of Default, or the condemnation or eminent domain proceeding does not occur during the twentieth (20th) Loan Year or the Mortgagor or tenants leasing more than twenty-five per cent (25%) of the rentable area of the Premises do not cancel their leases of the Premises, and if in the judgment of the Mortgagee the Premises can be restored to an architectural and economic unit of the same character and not less valuable than the same was prior to the condemnation or eminent domain proceeding, then the proceeds of the Awards shall be used to reimburse the Mortgagor for the cost of the Restoration as provided herein and in Section 11 hereof.

If an Event of Default has occurred, or an event has occurred which with the giving of notice (if required) and/or passage of time would constitute an Event of Default, or the condemnation or eminent domain proceeding occurs during the twentieth (20th) Loan Year, or the Mortgagor or tenants leasing more than twenty-five per cent (25%) of the rentable area of the Premises have elected to cancel their leases of the Premises, or if in the judgment of the Mortgagee the Premises cannot be restored to an architectural and economic unit of the same character and not less valuable than the same was prior to the condemnation or eminent domain proceeding, then at the option of the Mortgagee the proceeds of the Awards shall be applied to prepayment of the Indebtedness Hereby Secured as provided in Section 11 hereof.

(c) So long as any Indebtedness Hereby Secured shall be outstanding and unpaid, and whether or not Awards are sufficient or available therefor, the Mortgagor shall promptly commence and complete with all reasonable diligence the Restoration of the portion of the Premises not so taken as nearly as possible to the same value, condition and character, which existed immediately prior to such taking in compliance with all legal requirements. Any Restoration of the Premises involving costs in excess of \$50,000.00 shall be effected in accordance with Restoration Plans to be first submitted to and approved by the Mortgagee as provided in Section 11 hereof. The Mortgagor shall pay all costs of such Restoration.

UNOFFICIAL COPY

sufficient, in the reasonable judgment of the Mortgagee, to fully pay all costs, fees and expenses necessary for the Restoration of the Premises in accordance with the approved Restoration Plans and all legal requirements, free and clear of all Mechanic's Liens and other liens or claims for lien which are not Permitted Encumbrances.

(iv) Such architect's and engineer's certificates, waivers of lien, contractor's sworn statements, title insurance endorsements, plats of survey, opinions of counsel and such other evidences of cost, payment and performance as the Mortgagee may reasonably require and approve.

No payment made prior to the final completion of the Restoration of the Premises in accordance with the approved Restoration Plans shall exceed ninety per cent (90%) of the value of the work performed from time to time, as such value shall be determined by the Mortgagee in its sole and exclusive judgment. Any retention shall be paid upon final completion of the Restoration.

(d) If the Mortgagor shall fail to commence Restoration within one hundred twenty (120) days after the loss or damage to the Premises, and diligently proceed to complete Restoration in accordance with the Restoration Plans and Applicable Laws, or if any other Event of Default shall occur hereunder at any time (whether before or after the commencement of such Restoration) all or any portion of the Indebtedness Hereby Secured may be declared to be immediately due and payable and such Net Proceeds and Interest thereon, or any portion thereof, then held, or subsequently received, by the Mortgagee or other depository hereunder may be applied, at the option and in the sole discretion of the Mortgagee, to the payment or prepayment of the Indebtedness Hereby Secured in whole or in part, or to the payment and performance of such obligations of the Mortgagor as may then be in default hereunder.

(e) Any surplus which may remain out of such Net Proceeds and Interest thereon after payment of all costs, fees and expenses of such Restoration shall, at the option of the Mortgagee, either be applied to prepayment of the Indebtedness Hereby Secured, without payment of the Prepayment Premium, or be paid to the Mortgagor.

SECTION 12

Prepayment of Note

The Mortgagor shall not have the privilege to prepay the Principal Amount for the initial seven (7) Loan Years (hereinafter defined); provided, however, the Mortgagor shall thereafter have the right to prepay the Principal Amount in whole, upon thirty (30) days prior written notice to the Mortgagee, and upon payment of the applicable amount (the "Prepayment Premium") as set forth below, contemporaneously with the unpaid Principal Amount, plus accrued interest thereon, and any other amounts due under the Other Loan Documents:

UNOFFICIAL COPY

(a) If prepayment of the Principal Amount is made during the eighth (8th) Loan Year, the Prepayment Premium shall be six per cent (6%) of the then existing unpaid Principal Amount;

(b) If prepayment of the Principal Amount is made during the ninth (9th) Loan Year, the Prepayment Premium shall be five and one-half per cent (5-1/2%) of the then existing unpaid Principal Amount;

(c) If prepayment of the Principal Amount is made during the tenth (10th) Loan Year, the Prepayment Premium shall be five per cent (5%) of the then existing unpaid Principal Amount;

(d) If prepayment of the Principal Amount is made during the eleventh (11th) Loan Year, the Prepayment Premium shall be four and one-half per cent (4-1/2%) of the then existing unpaid Principal Amount;

(e) If prepayment of the Principal Amount is made during the twelfth (12th) Loan Year, the Prepayment Premium shall be four per cent (4%) of the then existing unpaid Principal Amount;

(f) If prepayment of the Principal Amount is made during the thirteenth (13th) Loan Year, the Prepayment Premium shall be three and one-half per cent (3-1/2%) of the then existing unpaid Principal Amount;

(g) If prepayment of the Principal Amount is made during the fourteenth (14th) Loan Year, the Prepayment Premium shall be three per cent (3%) of the then existing unpaid Principal Amount;

(h) If prepayment of the Principal Amount is made during the fifteenth (15th) Loan Year, the Prepayment Premium shall be two and one-half per cent (2-1/2%) of the then existing unpaid Principal Amount;

(i) If prepayment of the Principal Amount is made during the sixteenth (16th) Loan Year, the Prepayment Premium shall be two per cent (2%) of the then existing unpaid Principal Amount;

(j) If prepayment of the Principal Amount is made during the seventeenth (17th) Loan Year, the Prepayment Premium shall be one and one-half per cent (1-1/2%) of the then existing unpaid Principal Amount;

(k) If prepayment of the Principal Amount is made during the eighteenth (18th), nineteenth (19th) or twentieth (20th) Loan Year, the Prepayment Premium shall be one per cent (1%) of the then existing unpaid Principal Amount.

As used in this Mortgage, the term "Loan Year" means any twelve (12) month period commencing on August 1, 1992 or anniversary thereof.

UNOFFICIAL COPY

No Prepayment Premium shall be charged if the Principal Amount is paid off in full within ninety (90) days prior to the Maturity Date, or if the Principal Amount is prepaid by reason of application of Insurance Proceeds or Awards.

To the extent permitted by law, the Prepayment Premium shall also be payable if the Principal Amount is repaid following an acceleration after default, provided that, if the Principal Amount is so repaid prior to the expiration of the seventh (7th) Loan Year, the Prepayment Premium shall be an amount equal to ten per cent (10%) of the unpaid Principal Amount.

SECTION 13

Mortgagee's Performance of Mortgagor's Obligations

(a) Upon occurrence of an Event of Default hereunder the Mortgagee may, but without any obligation to do so, make any payment or perform any act which the Mortgagor is required to make or perform hereunder (whether or not the Mortgagor is personally liable therefor) in any form and lawful manner deemed expedient to the Mortgagee, including without limitation the right to enter into possession of the Premises, or any portion thereof, and to take any action (including without limitation the release of any information regarding the Premises, the Mortgagor and the obligations secured hereby) which the Mortgagee deems necessary or desirable in connection therewith at the cost and expense of the Mortgagor. The Mortgagee, in addition to any rights or powers granted or conferred hereunder but without any obligation to do so, may rent, operate, and manage the Premises, or any part thereof, including payment of management fees and other operating costs and expenses, of every kind and nature in connection therewith, so that the Premises shall be operational and usable for their intended purposes. All monies paid, and all reasonable expenses paid or incurred in connection therewith, including but not limited to reasonable costs of surveys, evidence of title, court costs and reasonable attorneys' fees and expenses and other monies advanced by the Mortgagee to reasonably protect the Premises and the lien hereof, to rent, operate and manage the Premises or to pay any such reasonable operating costs and expenses thereof as to keep the Premises operational and usable for their intended purposes shall be so much additional Indebtedness Hereby Secured, and shall become immediately due and payable on demand, and with interest thereon at the Default Rate.

(b) The Mortgagee, in making any payment may do so according to any written bill, notice, statement or estimate, without inquiry into the amount, validity or enforceability thereof.

(c) Nothing contained herein shall be construed to require the Mortgagee to advance or expend monies for any purpose mentioned herein, or for any other purpose.

SECTION 14

Security Agreement

UNOFFICIAL COPY

(a) This Mortgage is also a security agreement and financing statement under the Uniform Commercial Code of Illinois (the "Uniform Commercial Code") with respect to the Mortgaged Premises, except for the Land, the Improvements and Fixtures which cannot be severed from the Premises without causing structural damage (the "Collateral"), including without limitation any Personal Property, which Personal Property may not be deemed to be affixed to the Land or Improvements or may not constitute a "fixture", within the meaning of Section 9-313 of the Uniform Commercial Code and all replacements, substitutions for and additions to such Personal Property, and the proceeds thereof, and that a security interest in and to the Collateral is hereby granted to the Mortgagee, as collateral security for the payment of the Indebtedness Hereby Secured. All of the terms, provisions, conditions and agreements contained in this Mortgage pertain and apply to the Collateral as fully and to the same extent as to any other property comprising the Mortgaged Property; and the following provisions of this Section shall not limit the applicability of any other provisions of this Mortgage but shall be in addition thereto.

This Mortgage also constitutes a fixture filing under the Uniform Commercial Code.

(b) The names and addresses of the Mortgagor, as debtor and of the Mortgagee, as secured party, for the purposes of the Uniform Commercial Code, are set forth in Section 36 hereof.

(c) The Mortgagor is and will be the true and lawful owner of the Collateral, subject to no liens, charges or encumbrances other than the lien hereof and the Permitted Encumbrances.

(d) The Collateral will be kept at the Land, will be used by the Mortgagor solely for business purposes, and, except for Collateral which has become obsolete (the "Obsolete Collateral"), will not be removed therefrom without the consent of the Mortgagee. The Personal Property constituting the Collateral may be affixed to the Land or the Improvements but will not be affixed to any other real estate.

(e) No financing statement covering any of the Collateral or any proceeds thereof is on file in any public office. The Mortgagor will at its own cost and expense, upon demand, furnish to the Mortgagee such further information and will execute and deliver to the Mortgagee such financing statements, continuation statements and other documents in a form satisfactory to the Mortgagee and will do all such acts and things as the Mortgagee may at any time or from time to time request or as may be necessary or appropriate to establish and maintain a perfected security interest in the Collateral as security for the Indebtedness Hereby Secured, subject only to Permitted Encumbrances, and the Mortgagor will pay any fee, tax, charge or other cost of filing or recording such financing statements, continuation statements or other documents, in all public offices wherever filing or recording is deemed by the Mortgagee to be necessary or desirable.

(f) The Mortgagee shall have all the rights and remedies of a secured party under the Uniform Commercial Code upon the occurrence of an Event of Default hereunder, including without limitation, the right to take immediate and exclusive possession of the Collateral, or any part thereof to the extent and in the manner permitted by applicable law.

UNOFFICIAL COPY

SECTION 15

Restrictions on Transfer

For the purpose of protecting Mortgagee's security, and keeping the Premises free from subordinate financing liens, Mortgagor agrees that it will not:

(a) sell, assign, transfer, hypothecate, grant a security interest in or convey title to the Premises, or the beneficial interest in any trust holding title to the Premises, or the capital stock of any corporation, or the partnership interests of any partnership, holding title to the Premises or owning the beneficial interest in any trust holding title to the Premises; or

(b) obtain any financing, all or a part of which, will be secured by the Premises or by an assignment of the beneficial interest in any trust holding title to the Premises, or the capital stock of any corporation, or the partnership interests of any partnership, holding title to the Premises or owning the beneficial interest in any trust holding title to the Premises;

without the Mortgagee's prior written consent, and the happening of any such event without the written consent of the Mortgagee shall be an Event of Default hereunder. The Mortgagor shall have the right to dispose of Obsolete Collateral without the Mortgagee's consent as long as the Mortgagor obtains replacement Collateral, which shall then be subject to the security interest of the Mortgagee.

Notwithstanding the foregoing, provided no Event of Default has occurred which remains uncured the Mortgagor shall have the one-time right to transfer the Premises, to a transferee who the Mortgagee determines to be creditworthy, to have acceptable experience and management expertise, and to be financially capable of retiring the indebtedness evidenced hereby according to its terms. Such determinations shall be made by the Mortgagee based upon standards normally used by institutional lenders. As a condition to the transfer:

(i) the Mortgagor shall pay to the Mortgagee an assumption fee of one per cent (1%) of the unpaid Principal Amount, together with any reasonable costs and attorneys' fees incurred by the Mortgagee;

(ii) the Mortgagee may also require modification of the Note, the Mortgage and the Other Loan Documents solely to reflect the identity of the transferee;

(iii) the Mortgagee may require the transferee to execute an Environmental Indemnity Agreement and such other documents and opinions reasonably required by the Mortgagee; and

(iv) the Mortgagee may require endorsements to its mortgage loan title insurance policy at no expense to the Mortgagee.

UNOFFICIAL COPY

SECTION 16

Events of Default, Remedies

(a) Any one or more of the following events shall constitute an event of default under this Mortgage (an "Event of Default"):

(i) If any payment on the Note or deposit of monies required under this Mortgage is not received by the Mortgagee within ten (10) days after the due date; or

(ii) If the Mortgagor shall fail to maintain the insurance coverages in effect as required in Section 6 hereof and such failure shall continue for two (2) business days after written notice of such failure has been given by the Mortgagee to the Mortgagor; or

(iii) If a prohibited transfer shall occur as set forth in Section 15 hereof; or

(iv) If any representation or warranty made by the Mortgagor pursuant to or in connection with this Mortgage shall prove to be untrue or incorrect in any material respect; or

(v) If a final judgment or judgments for the payment of money (which payment has not been insured against) aggregating in excess of \$50,000.00 is or are outstanding against the Mortgagor, or the beneficiary of the Mortgagor (the "Beneficiary"), or against any of the properties or assets of the Mortgagor or the Beneficiary and any one of such judgments has remained unpaid, unvacated, unbonded or unstayed by appeal or otherwise for a period of sixty (60) days from the date of its entry; or

(vi) If a proceeding is instituted seeking a decree or order for relief in respect of the Mortgagor or the Beneficiary in any involuntary case under the Federal bankruptcy laws, as now or hereafter constituted, or any other applicable Federal or State bankruptcy, insolvency or other similar law now or hereafter in effect, or for the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of the Mortgagor or the Beneficiary, or for any substantial part of the property of the Mortgagor or the Beneficiary, or for the winding-up or liquidation of the business or affairs of the Mortgagor or the Beneficiary and such proceeding shall remain undismissed or unstayed and in effect for a period of sixty (60) consecutive days, or a decree or order shall be entered granting the relief sought in such proceeding; or

(vii) If the Mortgagor or the Beneficiary shall generally fail to pay, or admit an inability to pay its debts as they become due or shall voluntarily commence proceedings under the Federal bankruptcy laws, as now or hereafter constituted, or any bankruptcy, insolvency or other similar law now

UNOFFICIAL COPY

or hereafter in effect, or shall consent to the entry of an order for relief in an involuntary case under any such law, or shall consent to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or other similar official) of the Mortgagor or the Beneficiary or shall take any action in furtherance of any of the foregoing;

(viii) If any default shall occur in the due and punctual performance of, or compliance with any of the terms, covenants, conditions or agreements contained herein [other than as described in the preceding clauses (i) through (vii) of this paragraph (a) of Section 16] and the continuance of such default for thirty (30) days after notice thereof shall be given to the Mortgagor by the Mortgagee, provided that if any default referred to in this paragraph (viii) cannot be cured with diligence within said thirty (30) day period, the Mortgagor shall have such additional time [but not in excess of ninety (90) additional days] as may be required to cure such default so long as the Mortgagor commences and diligently pursues all actions necessary to effect such cure; or

(ix) If any default occurs in any of the Other Loan Documents which is not cured within any applicable cure period.

(b) Upon the occurrence of any Event of Default hereunder 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 other right of the Mortgagee hereunder to do any or all of the following without notice or demand upon the Mortgagor or any party liable for the obligations secured hereby or having an interest in the Mortgaged Property (except as otherwise specifically required herein or by law):

(i) To declare, without further notice, all Indebtedness Hereby Secured to be immediately due and payable with interest thereon at the Default Rate;

(ii) To commence a judicial action to foreclose this Mortgage;

(iii) To exercise any right, power or remedy provided by this Mortgage or the Note or by law or in equity or by any other document or instrument regulating, evidencing, securing or guarantying any of the Indebtedness Secured Hereby.

SECTION 17

Foreclosure

(a) The Mortgagee may bring an action in any court of competent jurisdiction to foreclose this Mortgage, to enforce any of the covenants and agreements hereof or in the Note, or exercise any of the remedies contained in the Illinois Mortgage Foreclosure Law, as amended from time to time.

UNOFFICIAL COPY

(b) In any proceeding for the foreclosure of the lien hereof, there shall be allowed and included as additional Indebtedness Hereby Secured, all reasonable expenditures and expenses which may be paid or incurred by or on behalf of the Mortgagee for attorneys' fees, appraisers' fees, accountants fees, environmental engineers fees, architect fees, fees of other professionals, 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 assurance with respect to title as the Mortgagee may deem reasonably necessary either to prosecute such proceedings for foreclosure and sale or any suit or to evidence to bidders at sales which may be had by the Mortgagee or pursuant to such decree the true conditions of the title to or the value of the Premises. All reasonable expenditures and expenses of the nature mentioned herein, and such other reasonable expenses and fees as may be incurred in the protection of the Mortgagee's Property, including without limitation the collection of the rents and other income and the maintenance of the lien of this Mortgage, including the reasonable fees and expenses of any attorney employed by the Mortgagee in any litigation or proceedings affecting this Mortgage, the Note, or the Mortgaged Property, including probate and bankruptcy proceedings, out of court workouts, or in preparation of the commencement or defense of any proceedings or threatened suit or proceeding or otherwise in dealing specifically therewith, shall be so much additional Indebtedness Hereby Secured and shall be immediately due and payable by the Mortgagor, with interest thereon at the Default Rate until paid.

(c) The foreclosure of this Mortgage on less than the whole of the Mortgaged Property shall not exhaust the right to foreclose hereunder and the lien and security interests herein granted, and the Mortgagee is specifically empowered to institute successive foreclosures hereunder until the whole of the Mortgaged Property shall be sold. If the proceeds of any such sale of less than the whole of the Mortgaged Property shall be less than the aggregate of the Indebtedness Hereby Secured and the expenses of such proceedings, this Mortgage and the lien and security interests hereof shall remain in full force and effect as to the unsold portion of the Mortgaged Property just as though no sale had been made. The Mortgagor shall never have any right to require the sale or sales of less than the whole of the Mortgaged Property, or to require the marshalling thereof. The Mortgagee shall have the right, at its sole election, to sell less than the whole of the Mortgaged Property.

(d) The Mortgagee shall have the right to become the purchaser at any sale of the Mortgaged Property hereunder and shall have the right to have credited on the amount of its bid therefor all (or any part of) of the Indebtedness Hereby Secured held by it as of the date of such sale.

(e) In case any proceeding taken by the Mortgagee on account of any failure to perform under this Mortgage shall have been discontinued or determined adversely to the Mortgagee, then in every case the Mortgagor and the Mortgagee shall be restored to their former positions and rights hereunder, respectively, and all rights, remedies and powers of the Mortgagor and the Mortgagee shall continue as though no such proceeding had been taken.

UNOFFICIAL COPY

(f) The Mortgagee, at its option, is hereby authorized to foreclose this Mortgage subject to the rights of any tenants of the Premises, and the failure to make any such tenants parties to any such foreclosure proceedings and to foreclose their rights will not be, nor be asserted to be by the Mortgagor, as a defense to any proceedings instituted to collect the Indebtedness Hereby Secured.

(g) In addition to any other remedies provided for hereby, the Mortgagee shall have the right of a secured party and the Mortgagor shall have the rights of a debtor under the Uniform Commercial Code with respect to the Collateral upon the occurrence of any Event of Default hereunder. Any requirements for reasonable notice under the Uniform Commercial Code shall be met if such notice is mailed, by certified United States mail or equivalent, postage prepaid, to the address of the Mortgagor set forth in Section 36 hereof, as required by any applicable cure period, or, if silent, at least ten (10) days before the time of sale or other disposition. Any such sale may be held as part of and in conjunction with any foreclosure sale of the other properties and rights constituting the Mortgaged Property in order that the Mortgaged Property, including the Collateral, may be sold as a single parcel if the Mortgagee elects. The Mortgagor hereby agrees that if the Mortgagee demands or attempts to take possession of the Collateral or any portion thereof in exercise of its rights and remedies hereunder, the Mortgagor will promptly turn over and deliver possession thereof to the Mortgagee, and the Mortgagor authorizes, to the extent the Mortgagor may now or hereafter lawfully grant such authority, the Mortgagee, its employees and agents, and potential bidders or purchasers to enter upon Premises or any other office, building or property where the Collateral or any portion thereof may at the time be located (or believed to be located) and the Mortgagee may (i) remove the same therefrom or render the same inoperable (with or without removal from such location); (ii) repair, operate, use or manage the Collateral or any portion thereof; (iii) maintain, repair or store the Collateral or any portion thereof; (iv) view, inspect and prepare the Collateral or any portion thereof for sale, lease or disposition; (v) sell, lease, dispose of or consume the same or bid thereon; or (vi) incorporate the Collateral or any portion thereof into the Land or the Improvements or Fixtures and sell, convey or transfer the same.

(h) The Mortgagor hereby agrees to indemnify, defend, protect and hold harmless the Mortgagee and its employees, officers and agents from and against any and all liabilities, claims and obligations which may be incurred, asserted or imposed upon them or any of them as a result of or in connection with any use, operation, lease or consumption of any of the Mortgaged Property, or any part thereof, or as a result of the Mortgagee seeking to obtain performance of any of the obligations due with respect to the Mortgaged Property, except from such liabilities, claims or obligations as result from the negligent or willful acts or omissions of the Mortgagee, its employees, officers or agents.

SECTION 18

Right of Possession

(a) Upon the occurrence of any Event of Default, the Mortgagor shall, forthwith upon written demand by the Mortgagee and whether or not the Indebtedness Hereby Secured shall be declared or become due, surrender possession of the Premises to the Mortgagee, and the Mortgagee shall be entitled either directly or by a receiver appointed

UNOFFICIAL COPY

by a court, without regard to the adequacy of the security for the Indebtedness Hereby Secured, without bringing any action or proceeding, to enter into and take possession of the Premises or any part thereof in the manner and to the extent permitted by law, together with all documents, books, records, papers, and accounts of the Mortgagor or the then owner of the Premises relating thereto, and exclude the Mortgagor, and any agents and servants thereof wholly therefrom and at its option do any or all of the following, in the name and on behalf of the Mortgagor or such owner, or in its own name, as the case may be:

(i) hold, operate, manage, and control all or any part of the Premises and conduct the business, if any, thereof, either personally or by its agents, with full power to use such measures, legal or equitable, as reasonably necessary to enforce the payment or security of the Leases, including without limitation actions for recovery of rent, actions in forcible detainer, and actions in distress for rent, all without notice to the Mortgagor;

(ii) upon a default by a tenant, cancel or terminate any Lease or sublease of all or any part of the Premises to the extent the Mortgagor would have that right;

(iii) extend or modify any then existing Leases and make new leases of all or any part of the Premises, which extensions, modifications, and new leases may provide for terms to expire, or for options to lessees to extend or renew terms, beyond the maturity date of the Note and the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon the Mortgagor, all persons whose interests in the Premises are subject to the lien hereof, and the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption for sale, discharge of the Indebtedness Hereby Secured, satisfaction of any foreclosure decree or issuance of any certificate of sale or deed to any such purchaser;

(iv) make all reasonably necessary or proper repairs, renewals, replacements, alterations, additions, betterments, and improvements in connection with the Premises as may seem judicious to the Mortgagee, to reasonably insure and reinsure the Premises and all risk incidental to the possession, operation and management thereof, and to receive all rents, issues, profits, revenues and other income therefrom;

(v) do all acts respecting the Mortgaged Property as the Mortgagee (or such receiver) may deem reasonably appropriate or necessary to preserve its value;

(vi) apply the rent and other income, after allowing a reasonable fee for the collection thereof and for the management of the Premises, and any other funds in the possession of the Mortgagee (or such receiver), after deducting the expenses of maintenance and operation of the Premises which may be incurred by the Mortgagee, to the payment and performance of the

UNOFFICIAL COPY

obligations of the Mortgagor secured hereby, including without limitation the payment of Taxes, Premiums and other charges applicable to the Premises, or in reduction of the Indebtedness Hereby Secured in such order and manner as the Mortgagee may determine.

(b) 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.

SECTION 19

Receiver

(a) The Mortgagee shall have the right, with the irrevocable consent of the Mortgagor hereby given and evidenced by the execution of this Mortgage, to obtain appointment of a receiver for the Mortgaged Property. Such appointment may be made at any time after the occurrence of any Event of Default and before or after foreclosure sale, without regard to solvency or insolvency of the Mortgagor at the time of application for such receiver, and without regard to the then value of the Mortgaged Property or whether the same shall be then occupied as a homestead or not; and the Mortgagee hereunder or any employee or agent thereof may be appointed as such receiver. Such receiver shall have the power to enter upon and take possession of the Mortgaged Property and to collect the rents, issues, profits, revenues and other income of the Premises during the pendency of any foreclosure suit or period during the continuance of any Event of Default and preceding the institution of a suit to foreclose this Mortgage, and in case of a sale and 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, profits, revenues and other income and such receiver shall have all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Mortgaged Property during the whole of said period.

(b) The court may, from time to time, authorize the receiver to apply the net income from the Mortgaged Property (after payment of operating expenses) in payment in whole or in part of: (i) the Indebtedness Hereby Secured or the Indebtedness secured by a decree foreclosing this Mortgage as a 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 sale or foreclosure hereof; (ii) the payment or performance of any other obligation secured hereby; or (iii) the deficiency in case of a sale and deficiency.

(c) The receiver so appointed by a court of competent jurisdiction shall be empowered to issue receiver's certificates for funds advanced by the Mortgagee for the purpose of protecting the value of the Mortgaged Property as security for the Indebtedness Hereby Secured. The amounts evidenced by receiver's certificates shall bear interest at the Default Rate and may be added to the cost of redemption if the owners of the Mortgaged Property, the Mortgagor, or a junior lien holder redeems at or prior to a non-judicial foreclosure sale or within the time permitted by law from a judicial foreclosure.

UNOFFICIAL COPY

SECTION 20

Proceeds of Sale

The proceeds of any foreclosure of the Mortgaged Property, or any portion thereof, shall be distributed and applied in the following order of priority to the extent permitted by applicable law: First, on account of all reasonable costs and expenses incident to the foreclosure or other proceedings for the recovery thereof, including all such items as are mentioned in Section 17 hereof; Second, to the payment and performance of any other obligations of the Mortgagor secured hereby, including without limitation all other items which, under the terms hereof, constitute Indebtedness Hereby Secured in addition to that evidenced by the Note with interest thereon at the Default Rate in such order and manner as the Mortgagee shall determine; Third, to the interest remaining unpaid upon the Note; Fourth, to the Prepayment Premium; Fifth, to the unpaid Principal Amount; and Sixth, any balance remaining to the Mortgagor.

Property of Cook County Clerk's Office

UNOFFICIAL COPY

SECTION 21: 5 : 1 2 1 1

Waiver of Right of Redemption and Other Rights

To the fullest extent permitted by law, the Mortgagor hereby covenants and agrees that it will not at any time insist upon or plead, or in any manner whatsoever 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, nor claim, take or insist upon any benefit or advantage of any law now or hereafter in force providing for the valuation, appraisal or marshalling 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 any 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. To the fullest extent permitted by law, the Mortgagor hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage, on its own behalf, on behalf of all persons claiming or having an interest (direct or indirect) by, through or under the Mortgagor and on behalf of each and every person acquiring any interest in or title to the Premises subsequent to the date hereof, it being the intent hereof that any and all such rights of redemption of the Mortgagor and of all other persons are and shall be deemed to be hereby waived to the fullest extent permitted by applicable law. To the fullest extent permitted by law, the Mortgagor agrees that it will not, by invoking or utilizing any applicable law or laws or otherwise, hinder, delay or impede the exercise of any right, power or remedy herein or otherwise granted or delegated to the Mortgagee, including without limitation the enforcement or foreclosure of this Mortgage or the delivery of possession thereof immediately after such sale to the purchaser at such sale, but will suffer and permit the exercise of every such right, power and remedy as though no such law or laws have been or will have been made or enacted; and the Mortgagor, for itself and all who may at any time claim through or under it, hereby waives to the fullest extent that it may lawfully so do, the benefit of all such laws, and any and all right to have the property subject to the lien of this Mortgage marshalled upon any foreclosure or sale. To the fullest extent permitted by law, the Mortgagor hereby agrees that no action for the enforcement of the lien or any provision hereof shall be subject to any defense which would not be good and valid in an action at law upon the Note. The Mortgagor hereby fully and absolutely waives and releases all rights and claims the Mortgagor may have in and to the Premises as a homestead exemption or other exemption under and by virtue of any act of the State of Illinois now existing or which may hereafter be passed in relation thereto.

SECTION 22

Rights Cumulative:

(a) 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, now or hereafter provided by law or in equity, and each and every right, power, and remedy

UNOFFICIAL COPY

herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by the Mortgagee.

(b) By accepting payment of any sums secured by this Mortgage after the due date thereof, by accepting performance of any of the Mortgagor's obligations hereunder after such performance is due, or by making any payment or performing any act on behalf of the Mortgagor which the Mortgagor was obligated but failed to perform or pay, the Mortgagee shall not waive, nor be deemed to have waived, its rights to require payment when due of all sums secured hereby and the due, punctual and complete performance of the Mortgagor's obligations under this Mortgage, the Other Loan Documents or the Note. No waiver or modification of any of the terms of this Mortgage shall be binding on the Mortgagee unless set forth in writing signed by the Mortgagee and any such waiver by the Mortgagee of any Event of Default by the Mortgagor under this Mortgage shall not constitute a waiver of any other Event of Default under the same or any other provision hereof. If the Mortgagee holds any additional security for any of the obligations secured hereby, it may pursue its rights or remedies with respect to such security at its option either before, contemporaneously with, or after a sale of the Mortgaged Property or any portion thereof.

(c) No act or omission by the Mortgagee shall release, discharge, modify, change or otherwise affect the liability under the Note, this Mortgage, or any other obligation of the Mortgagor, or any subsequent purchaser of the Mortgaged Property or any part thereof, or any maker, co-signer, endorser, surety or guarantor, or preclude the Mortgagee from exercising any right, power or privilege herein granted or intended to be granted in the event of any Event of Default then made or of any subsequent Event of Default, or alter the security interest or lien of this Mortgage except as expressly provided in an instrument or instruments executed by the Mortgagee. 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 Event of Default or acquiescence therein. Except as otherwise specifically required herein, notice of the exercise of any right, remedy or power granted to the Mortgagee by this Mortgage is not required to be given.

SECTION 23

Successors and Assigns

(a) This Mortgage and each and every provision hereof shall be binding upon the Mortgagor and its successors and assigns (including, without limitation, each and every record owner from time to time of the Mortgaged Property or any other person having an interest therein), and shall inure to the benefit of the Mortgagee and its respective successors and assigns.

(b) All of the covenants of this Mortgage shall run with the Land and be binding on any successor owners of the Land. In the event that the ownership of the Mortgaged Property or any portion thereof becomes vested in a person or persons other than the Mortgagor, the Mortgagee may, without notice to the Mortgagor, deal with such successor

UNOFFICIAL COPY

or successors in interest of the Mortgagor with reference to this Mortgage and the Indebtedness Hereby Secured in the same manner as with the Mortgagor without in any way releasing or discharging the Mortgagor from its obligations hereunder. The Mortgagor will give immediate written notice to the Mortgagee of any conveyance, transfer or change of ownership of the Mortgaged Property, but nothing in this Section shall vary or negate the provisions of Section 15 hereof.

(c) No successor to the rights, titles, interests, duties, discretions and options of the Mortgagee hereunder have any liability for any acts or omissions of any prior mortgagee.

SECTION 24

Effect of Extensions and Amendments

If the payment of the Indebtedness Hereby Secured, or any part thereof, be extended or varied, or if any part of the security or guaranties therefor be released, all persons now or at any time hereafter liable therefor, or interested in the Mortgaged Property shall be held to assent to such extension, variation or release, and their liability, 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, subject, however, to the provisions of Section 40.

SECTION 25

Execution of Separate Security Agreements, Financing Statements, Etc.; Estoppel Letter; Corrective Documents

(a) The Mortgagor will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered all such further acts, conveyances, notes, mortgages, security agreements, financing statements and assurances as the Mortgagee shall reasonably require for the better assuring, conveying, mortgaging, assigning and confirming unto the Mortgagee all property mortgaged hereby or property intended so to be, whether now owned by the Mortgagor or hereafter acquired. Without limitation of the foregoing, the Mortgagor will assign to the Mortgagee, upon request, as further security for the Indebtedness Hereby Secured, its interest in all agreements, contracts, licenses and permits affecting the Premises, such assignments to be made by instruments reasonably satisfactory to the Mortgagee, but no such assignment shall be construed as a consent by the Mortgagee to any agreement, contract, license or permit or to impose upon the Mortgagee any obligations with respect thereto.

(b) From time to time, either party will furnish within ten (10) days after request from the other party a written and duly acknowledged statement of the amount due under the Note and this Mortgage and whether any alleged offsets or defenses exist against the Indebtedness Hereby Secured.

(c) Mortgagor shall, at the request of the Mortgagee, promptly correct any defect, error or omission which may be discovered in the contents of this Mortgage or in the

UNOFFICIAL COPY

execution or acknowledgment hereof or in any other instrument executed in connection herewith or in the execution or acknowledgment of such instrument and will execute and deliver any and all additional instruments as may be reasonably requested by Mortgagee, to correct such defect, error or omission.

SECTION 26

Subrogation

If any part of the Indebtedness Hereby Secured is used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any prior lien or encumbrance upon the Mortgaged Property or any part thereof, then by advancing the monies to make such payment the Mortgagee shall be subrogated to the rights of the holder thereof in and to such other lien or encumbrance and any additional security held by such holder, and shall have the benefit of the priority of the same only to the extent of such amounts; provided, however, nothing contained herein shall extend to the benefit of the Mortgagee any personal guarantee of the Beneficiary, or any of its partners, of any prior lien or encumbrance.

SECTION 27

Interpretation of Agreement

Should any provision of this Mortgage require interpretation or construction in any judicial, administrative, or other proceeding or circumstance, it is agreed that the parties hereto intend that the court, administrative body, or other entity interpreting or construing the same shall not apply a presumption that the provisions hereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agent prepared the same, it being agreed that the agents of both parties hereto have fully participated in the preparation of all provisions of this Mortgage, including, without limitation, all Exhibits attached to this Mortgage.

SECTION 28

Governing Law; Invalidity of Certain Provisions

(a) This Mortgage shall be construed and enforced according to the laws of the State of Illinois, without reference to the conflicts of law principles of that State.

(b) The whole or partial invalidity, illegality or unenforceability of any provision hereof at any time, whether under the terms of then applicable law or otherwise, shall not affect (i) in the case of partial invalidity, illegality or unenforceability, the validity, legality or enforceability of such provision at such time except to the extent of such partial invalidity, illegality or unenforceability; or (ii) the validity, legality or enforceability of such provision at any other time or of any other provision hereof at that or any other time.

SECTION 29

UNOFFICIAL COPY

Loan Legal

The Mortgagor declares, represents, certifies and agrees that the proceeds of the Note will be used solely for business purposes and that the loan is exempt from interest limitations pursuant to the provisions of Illinois Revised Statutes, Chapter 17, Section 6404 and is an exempted transaction under the Truth in Lending Act, 15 U.S.C. Section 1601 et. seq.

All rights, remedies and powers provided by this Mortgage may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law, and all the provisions of this Mortgage are intended to be subject to all applicable mandatory provisions of law which may be controlling in the premises and to be limited to the extent necessary so that they will not render this Mortgage invalid or unenforceable under the provisions of any applicable law.

SECTION 30

Inspection of Premises and Records

The Mortgagee and its representatives and agents shall have the right to inspect the Premises and all books, records and documents relating thereto at reasonable times during regular business hours, after giving reasonable notice to the Mortgagor, and access thereto shall be permitted for that purpose. The Beneficiary of the Mortgage shall keep and maintain full and correct books and records showing in detail the income and expenses of the Premises and, within ten (10) days after written demand therefor by the Mortgagee to permit the Mortgagee or its agents to examine such books and records and all supporting vouchers and data at reasonable times during regular business hours and from time to time on request at its offices at the address hereinafter identified or at such other location as may be mutually agreed upon.

SECTION 31

Financial Statements

Mortgagor shall furnish to Mortgagee within one hundred twenty (120) days after the end of each of Mortgagor's fiscal and/or calendar years, financial and operating statements of the Premises for such fiscal and/or calendar year prepared and certified by the Beneficiary, which financial and operating statements shall in each case include a balance sheet and an income and expense statement made in connection with the Premises and the operation thereof; provided that if such statements are not furnished when due, Mortgagee shall have the right to audit the books of the Premises at the office of the Beneficiary and of Mortgagor at Mortgagor's expense. An updated rent roll of the Premises shall be furnished to the Mortgagee annually.

SECTION 32

Time is of the Essence

UNOFFICIAL COPY

Time is of the essence of this Mortgage and the Note.

SECTION 33

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 shall include the plural, the plural shall include the singular, and the masculine, feminine and neuter shall be freely interchangeable.

SECTION 34

Mortgagee Not a Joint Venturer or Partner

Mortgagor and Mortgagee acknowledge and agree that in no event shall Mortgagee be deemed to be a partner or joint venturer with Mortgagor or any beneficiary of Mortgagor. Without limitation of the foregoing Mortgagee shall not be deemed to be such a partner or joint venturer or account of its becoming a mortgagee in possession or exercising any rights pursuant to this Mortgage or pursuant to any other instrument or document evidencing or securing any of the Indebtedness Secured Hereby, or otherwise.

SECTION 35

Environmental Matters

Mortgagor represents, covenants and agrees as follows:

(a) Mortgagor will not use, generate, manufacture, produce, store, release, discharge, or dispose of on, under or about the Premises or transport to or from the Premises any Hazardous Substance (as hereinafter defined), except for customary and usual office supplies, inventory and usual cleaning materials, and any chemicals and related items used by tenants of the Premises in the ordinary course of business, or allow any other person or entity to do so in violation of any Environmental Law (as hereinafter defined).

(b) Mortgagor shall keep and maintain the Premises in compliance with, and shall not cause or permit the Premises to be in violation of any Environmental Law or allow any other person or entity to do so.

(c) Mortgagor shall give prompt written notice to Mortgagee of:

(i) any proceeding or inquiry by any governmental authority whether Federal, state, or local, with respect to violation of any Environmental Law, the presence of any Hazardous Substance on the Premises or the migration thereof from or to other property, upon receipt thereof by Mortgagor;

UNOFFICIAL COPY

(ii) all claims made or threatened by any third party against Mortgagor or the Premises relating to any loss or injury resulting from violation of any Environmental Law or the presence of any Hazardous Substance, upon receipt thereof by Mortgagor; and

(iii) Mortgagor's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Premises that could reasonably cause the Premises or any part thereof to be subject to any restrictions on the ownership, occupancy, transferability or use of the Premises under any Environmental Law.

(d) Mortgagee shall have the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with violation of any Environmental Law and Mortgagor hereby agrees to pay any reasonable attorneys' fees thereby incurred by Mortgagee in connection therewith.

(e) Mortgagor shall protect, indemnify and hold harmless Mortgagee, its directors, officers, administrators, shareholders, employees, agents, contractors, attorneys, successors and assigns from and against any and all loss, damage, cost, expense or liability (including reasonable attorneys' fees and costs) directly or indirectly arising out of or attributable to violation of any Environmental Law, the use, generation, manufacture, production, storage, release, threatened release, discharge, disposal, or presence of a Hazardous Substance on, under or about the Premises, including without limitation (i) all foreseeable consequential damages; and (ii) the costs of any required or necessary repair, cleanup, or detoxification of the Premises and the preparation and implementation of any closure, remedial or other required plans. This indemnity and covenant shall survive the reconveyance of the lien of this Mortgage, or the extinguishment of such lien by foreclosure or deed in lieu thereof. The Mortgagor shall not be liable for any spill, or use, of Hazardous Substances affecting the Premises which spill or use occurs after the Mortgagor no longer has any legal or equitable interest in the Premises, or is caused while Mortgagee is in possession of the Premises.

(f) In the event that any investigation, site monitoring, containment, cleanup, removal, restoration, or other remedial work of any kind or nature (the "Remedial Work") is reasonably necessary or desirable under any applicable local, state or Federal law or regulation, any judicial order, or by any governmental or nongovernmental entity or person because of, or in connection with violation of any Environmental Law or the current or future presence, or suspected presence, release or suspected release of a Hazardous Substance in or into the air, soil, ground, water, surface water or soil vapor at, or about, under or within the Premises, or any portion thereof, Mortgagor shall have thirty (30) days after written demand for performance thereof by Mortgagee or other party or governmental entity or agency (or such shorter period of time as may be required under any applicable law, regulation, order or agreement), to commence to perform, or cause to be commenced, and thereafter diligently prosecuted to completion, all such Remedial Work. All Remedial Work shall be performed by one or more contractors, approved in advance in writing by Mortgagee, and under the supervision of a consulting engineer approved in advance in writing by Mortgagee. All costs and expenses of such Remedial Work shall be paid by

UNOFFICIAL COPY

Mortgagor, including, without limitation, the charges of such contractor and the consulting engineer, and Mortgagee's reasonable attorneys' fees and costs incurred in connection with the monitoring or review of such Remedial Work. In the event Mortgagor shall fail to timely commence, or cause to be commenced, or fail to diligently prosecute to completion, such Remedial Work, Mortgagee may, but shall not be required to, cause such Remedial Work to be performed and all costs and expenses thereof incurred in connection therewith shall become immediately due and payable with interest thereon at the Default Rate until paid, and such amounts shall be secured by this Mortgage.

(g) Without Mortgagee's prior written consent, which shall not be unreasonably withheld, Mortgagor shall not take any remedial action in response to the violation of any Environmental Law or the presence of any Hazardous Substance on, under, or about the Premises, nor enter into any settlement agreement, consent decree or other compromise in respect to violation of any Environmental Law or any Hazardous Substance claims. Said consent may be withheld, without limitation, if Mortgagee, in its reasonable judgment, determines that said remedial action, settlement, consent or compromise might impair the value of Mortgagee's security hereunder; provided, however, that Mortgagee's prior consent shall not be necessary in the event that the violation of any Environmental Law or the presence of Hazardous Substance in, on, under or about the Premises either poses an immediate threat to the health, safety, or welfare of any individual or is of such nature that an immediate remedial response is necessary, and it is not possible to obtain Mortgagee's consent before taking such action, provided that in such event Mortgagor shall notify Mortgagee as soon as practicable of any action so taken. Mortgagee agrees not to withhold its consent, when such consent is required hereunder, if either (i) a particular remedial action is ordered by a court of competent jurisdiction or any governmental agency having jurisdiction over the Premises; or (ii) Mortgagor establishes to the reasonable satisfaction of Mortgagee that there is no reasonable alternative to such remedial action that would result in materially less impairment of Mortgagee's security hereunder.

(h) If an Event of Default occurs herein and the Mortgagee intends to exercise any of its remedies hereunder or under any of the Other Loan Documents or if the Mortgagee receives notice of, or has a reasonable factual basis to believe that, there is a release of a Hazardous Substance in or into the air, soil, ground water, surface water or soil vapor at, on, about, under or within the Premises, or any portion thereof, or violation of an Environmental Law, then the Mortgagee may obtain, at the cost and expense of the Mortgagor, an environmental audit of the Premises performed by an environmental firm selected by the Mortgagee.

For purposes of this Section 35, the following terms shall have the meanings as set forth below:

(A) "Environmental Laws" shall mean any Federal, state or local law, statute, ordinance, or regulation governing the use, storage, treatment, or disposal of Hazardous Substances, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA") as amended, 42 U.S.C. Sections 9601 et seq., and the Resource Conservation and Recovery Act of 1976 ("RCRA") as amended, 42 U.S.C. Sections 6901 et seq.

UNOFFICIAL COPY

(B) The term "Hazardous Substance" shall include without limitation:

(i) those substances included within the definitions of any more or one of the terms "hazardous substances", "hazardous materials", "toxic substances", and "solid waste" in CERCLA, RCRA, and the Hazardous Materials Transportation Act, as amended, 49 U.S.C. Sections 1801 ~~et seq.~~, and in the regulations promulgated pursuant to said laws or under applicable Illinois law;

(ii) those substances listed in the United States Department of Transportation Table (49 CFR 172.101 and amendments thereto) or by the Environmental Protection Agency (or any successor agency) as hazardous substances (40 CFR Part 302 and amendments thereto);

(iii) such other substances, materials and wastes which are or become regulated under applicable local, state or Federal Laws, or which are classified as hazardous or toxic under Federal, state, or local laws or regulations; and

(iv) any material, waste or substance which is (a) petroleum; (b) asbestos; (c) polychlorinated biphenyls; (d) designated as a "Hazardous Substance" pursuant to Section 311 of the Clean Water Act, 33 U.S.C. §§ 1251 et seq. (33 U.S.C. § 1321), or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. § 1317); (e) flammable explosives; or (f) radioactive materials.

UNOFFICIAL COPY

SECTION 36. 5 4 3 2 1 9

Notices

Any notice, demand or other communication required or permitted hereunder shall be in writing and shall be deemed to have been given if and when personally delivered, or, if sent by private courier service or sent by overnight mail service, shall be deemed to have been given if and when received (unless addressee refuses to accept delivery, in which case it shall be deemed to have been given when first presented to the addressee for acceptance) or on the third (3rd) Business Day after being deposited in United States registered or certified mail, postage prepaid. Any such notice, demand or other communication shall be addressed to a party at its address set forth below or to such other address the party to receive such notice may have designated to all other parties by notice in accordance herewith:

If to the Mortgagee:

Country Life Insurance Co.
c/o Genesis Realty Investors
225 West Washington Street
Chicago, Illinois 60606

If to the Mortgagor:

Amalgamated Trust and Savings Bank
100 South State Street
Chicago, Illinois 60603
Attn: Land Trust Department

With a copy to:

George D. Hanus, Esq.
333 West Wacker Drive
Chicago, Illinois 60606

SECTION 37

Performance of Obligations Under Commitment

Prior to the execution of this Mortgage the Mortgagee has heretofore issued its Loan Commitment dated March 16, 1992, pertaining to the Premises, which has been accepted by the party named therein. Mortgagor hereby covenants and agrees to comply with all of the terms and conditions of said Commitment, and if the Mortgagor fails to comply within thirty (30) days after the giving of notice, such non-compliance shall be and constitute an Event of Default under this Mortgage and the Note.

UNOFFICIAL COPY

SECTION 38

Costs and Expenses

In the event Mortgagor is required, pursuant to the provisions of this Mortgage, the Note or Other Loan Documents, to pay Mortgagee any amounts for claims, liabilities, expenses, damages or attorneys' fees or costs of any kind, Mortgagor shall only be obligated to pay the reasonable costs thereof.

SECTION 39

Consent

In any instance where Mortgagee's consent is required pursuant to the provisions of this Mortgage, the Note or Other Loan Documents, Mortgagee's consent shall not be unreasonably withheld or delayed.

SECTION 40

Exculpation

This Mortgage is executed by Amalgamated Trust and Savings Bank, not personally but solely as Trustee of Trust No. 5518 in the exercise of the power and authority conferred upon and vested in it as such Trustee (and the undersigned hereby warrants that it possesses full power and authority to execute this Mortgage), and it is expressly understood and agreed that nothing herein contained shall be construed as creating any liability on Amalgamated Trust and Savings Bank or any subsequent owner of the Premises or any person beneficially interested therein) personally to perform any covenant, either express or implied, herein contained, all such liability, if any, being expressly waived by every person now or hereafter claiming any right or security hereunder. Upon occurrence of an Event of Default under the terms hereof, or the Other Loan Documents, or upon maturity of the Note, whether by acceleration or the passage of time or otherwise, the recourse of the Mortgagee shall be limited to judicial foreclosure and the other remedies set forth herein, or in the Note or the Other Loan Documents, and, there shall be no personal liability of the Mortgagor or the Beneficiary for the payment of principal or interest or other amounts which may be due and payable on or under the terms hereof, the Note or the Other Loan Documents. Notwithstanding the foregoing, nothing contained herein shall relieve the parties thereto of any personal liability they may have under the Environmental Indemnity Agreement. The Mortgagee shall look solely to the Premises and any other security granted to the Mortgagee under the terms hereof, the Note and the Other Loan Documents, and shall not institute, seek, obtain or take any deficiency or monetary judgment against the Mortgagor or the Beneficiary, for any amounts unsatisfied after the application of the Premises and other security granted to the Mortgagee under the terms hereof and the Other Loan Documents.

UNOFFICIAL COPY

EXHIBIT "A"

LEGAL DESCRIPTION OF LAND

PARCEL 1:

LOTS 23 TO 30 INCLUSIVE AND THE SOUTH 80 FEET OF THE WEST 139.94 FEET OF LOT 31 IN THE RESUBDIVISION OF LOT 75 IN BLOCK 40 IN THE SUBDIVISION OF BLOCK 40 AND OF LOT 1 IN BLOCK 41 IN FREDERICK H. BARTLETT'S THIRD ADDITION TO BARTLETT HIGHLANDS BEING A SUBDIVISION IN THE SOUTHWEST 1/4 OF SECTION 7, TOWNSHIP 38 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS (EXCEPT THAT PART THEREOF CONDEMNED IN CASE 66L4863), IN COOK COUNTY, ILLINOIS.

PARCEL 2:

THAT PART OF THE VACATED ALLEY DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF LOT 30 IN THE RESUBDIVISION OF LOT 75 IN BLOCK 40 IN THE SUBDIVISION OF BLOCK 40 AND OF LOT 1 IN BLOCK 41 IN FREDERICK H. BARTLETT'S THIRD ADDITION TO BARTLETT HIGHLANDS, BEING A SUBDIVISION IN THE SOUTHWEST 1/4 OF SECTION 7, TOWNSHIP 38 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, AS THE PLACE OF BEGINNING; THENCE NORTH 16 FEET PARALLEL WITH HARLEM AVENUE TO A POINT; THENCE EAST 139.94 FEET PARALLEL WITH ARCHER AVENUE TO A POINT; THENCE SOUTH 16 FEET PARALLEL WITH HARLEM AVENUE TO A POINT; THENCE WEST 139.94 FEET PARALLEL WITH ARCHER AVENUE TO THE POINT OF BEGINNING (EXCEPT THE WEST 22 FEET THEREOF CONDEMNED IN CASE 66L4863), IN COOK COUNTY, ILLINOIS.

PARCEL 3:

THE SOUTH 1/2 OF THE EAST-WEST 16 FOOT WIDE VACATED ALLEY LYING NORTH OF AND ADJOINING LOTS 23 TO 30 AND LYING SOUTH OF AND ADJOINING LOT 31 (EXCEPT THEREFROM THE WEST 139.94 FEET THEREOF) IN THE RESUBDIVISION OF LOT 75 IN BLOCK 40 IN THE RESUBDIVISION OF BLOCK 40 AND OF LOT 1 IN BLOCK 41 IN FREDERICK H. BARTLETT'S 3RD ADDITION TO BARTLETT HIGHLANDS, BEING A SUBDIVISION IN THE SOUTHWEST 1/4 OF SECTION 7, TOWNSHIP 38 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

92525209

UNOFFICIAL COPY

EXHIBIT "B"

Page 1 of 2

PERMITTED EXCEPTIONS

1. Real estate taxes which are not yet due and payable.
2. Rights of Bond Drug Company of Illinois under Lease dated October 15, 1991.
3. Reservation for the benefit of the Peoples Gas Light and Coke Company as a right of way for existing underground facilities and for the operation, maintenance, repair and replacement of such facilities with the right of access thereto contained in the ordinance passed by the City Council of the City of Chicago a copy of which was recorded July 2, 1969 as Document 20889386.
4. Grant of easement dated February 9, 1968 and recorded January 19, 1970 as Document 21060676 made by Frank M. Phifer and Myrtle M. Phifer, his wife to The Commonwealth Edison Company, a corporation of Illinois, its successors and assigns perpetual right, easements, permission and authority to construct, operate, use, maintain, repair, relocate, replace, renew and remove poles, crossarms, wires, cables, conduit and other overhead or underground equipment, or both, for the transmission and distribution of electric energy in, under, over, across and along the strip of land last above described, when title thereto shall have been acquired by said owners of adjoining land, with the right of ingress to and egress from said land at all times for any and all such purposes.
5. Grant of easement dated June 6, 1969 and recorded September 26, 1969 as Document 20969629 made by Mobil Oil Corporation, a New York corporation granting an easement to the Peoples Gas Light and Coke Company, granting a permanent right of way and perpetual easement to construct, reconstruct, renew, replace, operate, maintain, inspect, alter, repair and remove a pipeline or pipelines for the transportation of gas and such drips, valves, fittings, meters and other equipment and appurtenances as may be necessary or convenient for such operations, over, through, under, along and across the east 4 feet of that part of Lot 31 described in Parcel 1 of the legal description and the east 4 feet of Parcel 2.
6. Grant of easement dated February 9, 1968 and recorded January 19, 1970 as Document 21060678 made by Michael G. Sela and Florence H. Szela, his wife to The Commonwealth Edison Company granting a perpetual right, easement permission and authority to construct, operate, use, maintain, repair, relocate, replace, renew and remove poles, crossarms, wires, cables, conduit and other overhead or underground equipment, or both, for the transmission and distribution of electric energy in, under, over, across and along the strip of land last above described, when title thereto shall have been acquired by said owners of adjoining land, with the right of ingress to and egress from said land at all times for any and all such purposes.

97525209

UNOFFICIAL COPY

EXHIBIT "B"

Page 2 of 2

7. Relative to the vacation of E-W 16 foot wide vacated alley lying north of and adjoining Lots 23 to 30 and lying south of and adjoining Lot 31 we note the following: Rights of the municipality, State of Illinois, the public and adjoining owners in and to said vacated (street/alley). (Affects Parcel 3 only)
8. Restrictive Covenant contained in the quit-claim deed from Mobil Oil Corporation to Aetna Development Corporation recorded November 27, 1991 as Document Number 91624921 prohibiting the use of the land for the sale or distribution of petroleum products for a period of 15 years commencing on October 11, 1991.
9. Covenant of release and discharge relating to, among other things, the existence and removal of petroleum contamination from the land in favor of Mobil Oil Corporation, its successors and assigns, contained in the quit-claim deed from Mobil Oil Corporation to Aetna Development Corporation recorded November 27, 1991 as Document Number 91624921.
10. Agreement for access to premises after transfer of title dated November 5, 1991 and recorded November 27, 1991 as Document Number 91624923 made by and between Mobil Oil Corporation and Aetna Development Corporation.

92528209