

AFTER RECORDING, MAIL TO
CONTINENTAL BANK N.A.
231 S. La Salle Street
Chicago, Illinois 60697
C. Meier, P/B, 10th Floor

UNOFFICIAL COPY

THIS INSTRUMENT PREPARED BY:
Robert J. Holz, Esq.
190 S. La Salle Street
Chicago, Illinois 60690



92542917

DEPT-01 RECORDING \$47.50
T41111 TRAM 2666 07/24/92 12:01:00
#4013 * 92-542917
COOK COUNTY RECORDER

MORTGAGE ASSIGNMENT OF LEASES AND RENTS
AND SECURITY AGREEMENT

This Mortgage is made as of this 29th day of June, 1992,
between TWEEMARK ENTERPRISES, AN ILLINOIS GENERAL PARTNERSHIP, ("Mortgagor"),
924 W. Barry, Chicago, Illinois 60657, and Continental
Bank N.A., a national banking association, whose address is 231 South LaSalle
Street, Chicago, Illinois 60697 ("Lender").

RECITALS

Mortgagor is indebted to Lender in the principal sum of THREE HUNDRED
TWENTY THOUSAND AND NO/100THS DOLLARS (\$320,000.00) which
indebtedness is evidenced by Maker's Note dated June 28, 1992 and all
modifications, substitutions, extensions and renewals thereof ("Note")
providing for repayment of principal and interest and providing for a final
payment of all sums due thereunder on Demand. All obligors on
the Note are collectively referred to herein as "Maker".

THE GRANT

92542917

TO SECURE to Lender the repayment of the indebtedness evidenced by the
Note, with interest thereon, the payment of all charges provided herein and
all other sums, with interest thereon, advanced in accordance herewith to
protect the security of this Mortgage; and the performance of the covenants
and agreements contained herein and in the Note, all future advances and all
other indebtedness of Mortgagor or Maker to Lender whether now or hereafter
existing (collectively, the "Secured Indebtedness" or "Indebtedness") and also
for other good and valuable consideration, the receipt and sufficiency whereof
is acknowledged, Mortgagor does hereby convey, warrant, grant, and mortgage to
Lender the real estate ("Real Estate") located in the County of Cook
Illinois, described on Exhibit A, subject only to the covenants,
conditions, easements and restrictions set forth on Exhibit B, if any,
("Permitted Encumbrances"). The Real Estate has the common street address of
924 W. Barry - Units 1, 2, 3, Chicago, Illinois 60657

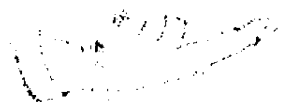
TOGETHER WITH all buildings, structures, improvements, tenements, fixtures,
easements, mineral, oil and gas rights, water rights, appurtenances thereunto
belonging, title or reversion in any parcels, strips, streets and alleys
adjoining the Real Estate, any land or vaults lying within any street,
thoroughfare, or alley adjoining the Real Estate, and any privileges,
licenses, and franchises pertaining thereunto, all of the foregoing now or
hereafter acquired, all leasehold estates and all rents, issues, and profits
thereof, for so long and during all such times as Mortgagor, its successors
and assigns may be entitled thereto, all the estate, interest, right, title or
other claim or demand which Mortgagor now has or may hereafter have or acquire
with respect to: (i) proceeds of insurance in effect with respect to the
Premises and (ii) any and all awards, claims for damages, judgments,
settlements and other compensation made for or consequent upon the taking by
condemnation, eminent domain or any like proceeding, or by any proceeding or
purchase in lieu thereof, of the whole or any part of the Premises, including,
without limitation, any awards and compensation resulting from a change of
grade of streets and awards and compensation for severance damages
(collectively "Awards") (which are each pledged primarily and on a parity with
the Real Estate and not secondarily), and all apparatus, equipment or articles
now or hereafter located thereon used to supply heat, gas, air conditioning,
water, light, power, refrigeration (whether single units or centrally
controlled), and ventilation, and any other apparatus, equipment or articles
used or useful in the operation of the Premises including all additions,
substitutions and replacements thereof. All of the foregoing are declared to

6770

P.I.N. 14-29-206-068-1001
1002
1003

Handwritten signature and initials

UNOFFICIAL COPY



WITNESSE

Property of Cook County Clerk's Office

92542917

WITNESSE

be a part of the Real Estate whether physically attached or not. All similar apparatus, equipment, articles and fixtures hereafter placed on the Real Estate by Mortgagor or its successors or assigns shall be considered as constituting part of the Real Estate. (All of the foregoing, together with the Real Estate (or the leasehold estate if this Mortgage is on a leasehold) are hereinafter referred to as the "Premises".)

To have and to hold the Premises unto the Lender, its successors and assigns forever, for the purposes and uses set forth herein, free from all rights and benefits under any Homestead Exemption laws of the state in which the Premises is located, which rights and benefits Mortgagor does hereby expressly release and waive.

COVENANTS & AGREEMENTS

Mortgagor and Lender covenant and agree as follows:

1. Payment of Principal and Interest. Mortgagor shall promptly pay or cause to be paid when due all Secured Indebtedness.

2. Application of Payments. Unless prohibited by applicable law, all payments received by Lender under this Mortgage, the Note, the Loan Agreement, if any, and all other documents given to Lender to further evidence, secure or guarantee the Secured Indebtedness (collectively, and as amended, modified or extended, the "Loan Documents"), shall be applied by Lender first to any sums advanced by Lender pursuant to Paragraph 7 to protect the security of this Mortgage, then to interest payable on the Note and to any prepayment premium which may be due, and then to Note principal (and if principal is due in installments, application shall be to such installments in the inverse order of their maturity).

Any applications to principal of condemnation awards, as provided in Paragraph 9, shall not extend or postpone the due date of any monthly installments of principal or interest, or change the amount of such installments or of the other charges or payments provided in the Note or other Loan Documents.

3. Prior Encumbrances; Liens. Mortgagor shall perform all of Mortgagor's obligations under any mortgage, deed of trust or other security agreement (collectively "Prior Encumbrances") creating a lien having priority over this Mortgage, including Mortgagor's covenants to make payments when due. Any act or omission of Mortgagor which, with the giving of notice or the passage of time would constitute a default or event of default under any Prior Encumbrance or under any ground lease shall be a default under this Mortgage. Mortgagor shall promptly deliver to Lender all notices given or received of any defaults or events of default under any Prior Encumbrance or any ground lease. Although this Paragraph requires Mortgagor to comply with Prior Encumbrances, it does not entitle Mortgagor to create or allow a Prior Encumbrance that would be otherwise prohibited by this Mortgage, such as Prohibited Transfers under Paragraph 15, or prohibited by the other Loan Documents.

Mortgagor shall keep the Premises free from mechanics' and all other encumbrances and liens, except Permitted Encumbrances and statutory liens for real estate taxes and assessments not yet due and payable.

4. Taxes and Assessments; Rents. Mortgagor shall pay or cause to be paid when due all Impositions and water, sewer and other charges, fines and Impositions attributable to the Premises and leasehold payments, if any, and all other sums due under any ground lease attributable to the Premises. Mortgagor shall provide evidence satisfactory to Lender of compliance with these requirements promptly after the respective due dates for payment. Mortgagor shall pay, in full, but under protest in the manner provided by Statute, any tax or assessment Mortgagor desires to contest or at Mortgagor's option, Mortgagor shall post a bond equal to 100% of the contested tax or assessment.

5. Insurance. Mortgagor shall insure and keep insured the Premises against such perils and hazards, and in such amounts and with such limits, as Lender may from time to time require, and, in any event, including:

UNOFFICIAL COPY

Property of Cook County Clerk's Office

PROPERTY

(a) Insurance against loss to the Premises caused by fire, lightning, windstorms, vandalism, malicious mischief, and risks covered by the so-called "all risk" endorsement and such other risks as the Lender may reasonably require, in amounts (but in no event less than the initial stated principal amount of the Note) equal to the full replacement value of the Premises, fixtures and equipment, plus the cost of debris removal, with full replacement cost amount and inflation guard endorsement;

(b) Comprehensive general public liability insurance against death, bodily injury and property damage arising in connection with the Premises with such limits as the Lender may reasonably require;

(c) Rent and rental value insurance in amounts sufficient to pay during any period of up to one (1) year in which the Premises may be damaged or destroyed (i) all rents derived from the Premises and (ii) all amounts (including, but not limited to, all Impositions, utility charges and insurance premiums) required to be paid by Mortgagor or by tenants of the Premises;

(d) Broad form boiler and machinery insurance on all equipment and objects customarily covered by such insurance (if any are located at the Premises), providing for full repair and replacement cost coverage, and other insurance of the types and in amounts as the Lender may reasonably require, but in no event less than that customarily carried by persons owning or operating like properties;

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

All insurance shall: (i) be in form and content, and shall be carried in companies, approved by Lender; (ii) have attached standard non-contributing mortgagee clauses and with loss payable to Lender; (iii) provide 30 days' advance written notice to Lender before cancellation or material modification; and (iv) provide that no claims shall be paid thereunder without ten days' advance written notice to Lender. Originals of all policies and renewals (or certificates evidencing the same), marked "paid," shall be delivered to Lender at least thirty (30) days before the expiration of existing policies. Mortgagor shall not carry any separate insurance on such improvements concurrent in kind or form with any insurance required hereunder or contributing in the event of loss without Lender's prior written consent, and any such policy shall have attached standard non-contributing mortgagee clauses and with loss payable to Lender, and shall meet all other requirements set forth herein. Mortgagor shall give immediate notice of any casualty loss to Lender.

In case of loss covered by any of such policies, Lender is authorized to adjust, collect and compromise in its discretion, all claims thereunder and in such case, the Mortgagor covenants to sign upon demand, or the Lender may sign or endorse on the Mortgagor's behalf, all necessary proofs of loss, receipts, releases, and other papers required by the insurance companies to be signed by the Mortgagor. At the option of the Lender, all or part of the proceeds of any such insurance may be applied either to the restoration of the Premises or to the reduction of the Secured Indebtedness. In the event the proceeds of insurance are applied to reduce the Secured Indebtedness, any such application shall constitute a prepayment, and any prepayment premium required by the Loan Documents shall then be due and payable as provided therein. Lender may apply the insurance proceeds to such prepayment premium. In the event the Premises are restored, the Lender may pay the insurance proceeds in accordance with its customary construction loan payment procedures and the Mortgagor agrees in such event to pay the Lender its customary fee for such services.

6. Use, Preservation and Maintenance of Premises; Leaseholds; Condominiums; Planned Unit Developments. Mortgagor shall keep the Premises in good condition and repair and shall not commit waste or permit impairment or deterioration of the Premises. Mortgagor shall not allow, store, treat or dispose of Hazardous Material as defined in Paragraph 24, nor permit the same to exist or be stored, treated or disposed of, from or upon the Premises. Mortgagor shall promptly restore or rebuild any buildings or improvements now or hereafter on the Premises which may become damaged or destroyed. Mortgagor

UNOFFICIAL COPY

Property of Cook County Clerk's Office

0024911

shall comply with all requirements of law or municipal ordinances with respect to the use, operation, and maintenance of the Premises, including all environmental, health and safety laws and regulations, and shall make no material alterations in the Premises except as required by law, without the prior written consent of Lender. Mortgagor shall not grant or permit any easements, licenses, covenants or declarations of use against the Premises. If this Mortgage is on a unit in a condominium or a planned unit development, Mortgagor shall perform all of Mortgagor's obligations under the declaration of covenants creating or governing the condominium or planned unit development, the by-laws and regulations of the condominium or planned unit development, and constituent documents. If this Mortgage is on a ground leasehold, Mortgagor shall perform or cause to be performed all obligations of the lessee under the underlying ground lease.

7. Protection of Lender's Security. If Mortgagor fails to perform any of the covenants and agreements contained in this Mortgage, the Note or the other Loan Documents, or if any action or proceeding is threatened or commenced which materially affects Lender's interest in the Premises, then Lender, at Lender's option, upon notice to Mortgagor, may make such appearances, disburse such sums, including reasonable attorneys' fees, and take such action as it deems expedient or necessary to protect Lender's interest, including (i) making repairs; (ii) discharging Prior Encumbrances in full or part; (iii) paying, settling, or discharging tax liens, mechanics' or other liens, and paying ground rents (if any); (iv) procuring insurance; and (v) renting, operating and managing the Premises and paying operating costs and expenses, including management fees, of every kind and nature in connection therewith, so that the Premises shall be operational and usable for its intended purposes. Lender, in making such payments of Impositions and assessments, may do so in accordance with any bill, statement, or estimate procured from the appropriate public office without inquiry into the accuracy of same or into the validity thereof.

Any amounts disbursed by Lender pursuant to this Paragraph 8 shall be a part of the Secured Indebtedness and shall bear interest at the default interest rate provided in the Note (the "Default Rate"). Nothing contained in this Paragraph 7 shall require Lender to incur any expense or take any action hereunder, and inaction by Lender shall never be considered a waiver of any right accruing to Lender on account of this Paragraph 7.

8. Inspection of Premises and Books and Records. Mortgagor shall permit reasonable access to Lender and its representatives and agents to inspect the Premises from time to time during normal business hours. Mortgagor shall keep and maintain full and correct books and records showing in detail the income and expenses of the Premises. From time to time upon not less than five (5) days demand, Mortgagor shall permit Lender or its agents to examine and copy such books and records and all supporting vouchers and data at its offices or at the address identified above.

9. Condemnation. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Premises, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid directly to Lender. Mortgagor hereby grants a security interest to Lender in and to such proceeds. Lender is authorized to collect such proceeds and if the proceeds are sufficient to pay the Secured Indebtedness in full, to apply the proceeds to the Secured Indebtedness or if the proceeds will not pay the Secured Indebtedness in full Lender may at Lender's sole option and discretion apply said proceeds either to restoration or repair of the Premises or in payment of the Secured Indebtedness. In the event the Premises are restored, Lender may pay the condemnation proceeds in accordance with its customary construction loan payment procedures, and may charge its customary fee for such services. In the event the condemnation proceeds are applied to reduce the Secured Indebtedness, any such application shall constitute a prepayment, and any prepayment premium required by the Loan Documents shall then be due and payable as provided therein. Lender may apply the condemnation proceeds to such prepayment premium.

10. Mortgagor Not Released; Forbearance by Lender Not a Waiver; Remedies Cumulative. Any extension or other modification granted by Lender to any successor in interest of Mortgagor of the time for payment of all or any part of the Secured Indebtedness shall not operate to release, in any manner,

UNOFFICIAL COPY

Property of Cook County Clerk's Office

2001/01/01

1/1/2001

Mortgagor's liability. Any forbearance or inaction by Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the later exercise of any such right or remedy. Any acts performed by Lender to protect the security of this Mortgage, as authorized by Paragraph 7 or otherwise, shall not be a waiver of Lender's right to accelerate the maturity of the Indebtedness. All remedies provided in this Mortgage are distinct and cumulative to any other right or remedy under this Mortgage or afforded by law or equity, and may be exercised concurrently, independently or successively. No consent or waiver by Lender to or of any breach or default by Mortgagor shall be deemed a consent or waiver to or of any other breach or default.

11. Successors and Assigns Bound; Joint and Several Liability; Co-signers. The covenants and agreements contained herein shall bind, and the rights hereunder shall inure to, the respective heirs, executors, legal representatives, successors and permitted assigns of Lender and Mortgagor. If this Mortgage is executed by more than one Mortgagor, each Mortgagor shall be jointly and severally liable hereunder.

12. Excess Loan Charges. If the Loan secured by this Mortgage is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Maker which exceeded permitted limits ("Excess Loan Charges") will, at Lender's option, either be refunded to Maker or applied as a credit against the then outstanding principal balance or accrued and unpaid interest thereon. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge under the Note. Neither Mortgagor nor any other guarantor or obligor on the Note shall have any action against Lender for any damages whatsoever arising from the payment of Excess Loan Charges.

13. Notice. Except for any notice required under applicable law to be given in another manner, any notices required or given under this Mortgage shall be given by hand delivery or by certified mail, return receipt requested. Notices shall be given to Mortgagor at the address provided below and to Lender at Lender's address stated above (Attention: Private Banking, Real Estate Division, Jane Okarski). Notices shall be deemed to have been given and effective on the date of delivery, if hand-delivered, or three (3) days after the date of mailing shown on the certified receipt, if mailed. Any party hereto may change the address to which notices are given by notice as provided herein.

14. Governing Law; Severability. The laws of Illinois shall govern the interpretation and enforcement of this Mortgage. The foregoing sentence shall not limit the applicability of Federal law to this Mortgage. If any provision or clause of this Mortgage, or the application thereof, is adjudicated to be invalid or unenforceable, the validity or enforceability of the remainder of this Mortgage shall be construed without reference to the invalid or unenforceable provision or clause.

15. Prohibitions on Transfer of the Premises or of an Interest in Mortgagor. It shall be an immediate default if, without the prior written consent of Lender, which consent will not be unreasonable withheld, Mortgagor shall create, effect or consent to or shall suffer or permit any conveyance, sale (including an installment sale), assignment, transfer, lien, pledge, hypothecation, mortgage, security interest, or other encumbrance or alienation, whether by operation of law, voluntarily or otherwise, (collectively "Transfer") of (1) the Premises or any part thereof or interest therein; or (2) all or a portion of the beneficial interest or the power of direction, if title to the Premises is in a land trust; or (3) all or a portion of the stock of any corporate Mortgagor that results or could result in a material change in the identity of the person(s) or entity(ies) previously in control of such corporation; or (4) all or a portion of an interest in a partnership, or a joint venture that results or could result in a material change in the identity of the person(s) or entity(ies) in control of such partnership or joint venture, if Mortgagor is or includes a partnership or joint venture (each of the foregoing is referred to as a

UNOFFICIAL COPY

Property of Cook County Clerk's Office

83215011

"Prohibited Transfer"). In the event of such default, Lender, at its sole option, may declare the entire unpaid balance, including interest, immediately due and payable.

16. Event of Default. Each of the following shall constitute an event of default ("Event of Default") under this Mortgage:

(a) Mortgagor's failure to pay any amount due herein or secured hereby, or any installment of principal or interest when due and payable whether at maturity or by acceleration or otherwise under the Note, this Mortgage, or any other Loan Document, which failure continues for more than five (5) days after the due date; provided, however, that this grace period shall not apply to the other sub-paragraphs of this Paragraph 16;

(b) Mortgagor's failure to perform or observe any other covenant, agreement, representation, warranty or other provision contained in the Note, this Mortgage (other than an Event of Default described elsewhere in this Paragraph 16) or any other Loan Document and such failure continues for a period of thirty (30) days after the earlier of Mortgagor's becoming aware of such failure or the effective date of notice thereof given by Lender to Mortgagor; provided however, that this grace period shall not apply to the other sub-paragraphs of this Paragraph 16;

(c) A Prohibited Transfer occurs;

(d) Mortgagor shall: (i) file a voluntary petition in bankruptcy, insolvency, debtor relief or for arrangement, reorganization or other relief under the Federal Bankruptcy Act or any similar state or federal law; (ii) consent to or suffer the appointment of or taking possession by a receiver, liquidator, or trustee (or similar official) of the Mortgagor or for any part of the Premises or any substantial part of the Mortgagor's other property; (iii) make any assignment for the benefit of Mortgagor's creditors; (iv) fail generally to pay Mortgagor's debts as they become due; or (v) a court having jurisdiction shall enter a decree or order for relief in respect of Mortgagor in any involuntary case brought under any bankruptcy, insolvency, debtor relief, or similar law;

(e) All or a substantial part of Mortgagor's assets are attached, seized, subjected to a writ or distress warrant, or are levied upon;

(f) (i) the dissolution or termination of existence of Mortgagor if Mortgagor is other than a natural person, voluntarily or involuntarily, whether by reason of death of a general partner of Mortgagor or otherwise; (ii) the amendment or modification in any respect of Mortgagor's articles or agreement of partnership or its corporate resolutions or its articles of incorporation or bylaws that would materially and adversely affect Mortgagor's performance of its obligations under the Note, this Mortgage or the other Loan Documents;

(g) This Mortgage shall not constitute a valid lien on and security interest in the Premises (subject only to the Permitted Encumbrances), or if such lien and security interest shall not be perfected;

(h) The Premises are abandoned; or

(i) An indictment or other charge is filed against the Mortgagor, in any jurisdiction, under any federal or state law, for which forfeiture of the Premises is a potential penalty unless Mortgagor vigorously defends the indictment.

17. ACCELERATION; REMEDIES. AT ANY TIME AFTER AN EVENT OF DEFAULT AND EXPIRATION OF THE CURE PERIOD, IF ANY, LENDER, AT LENDER'S OPTION, MAY DECLARE ALL SUMS SECURED BY THIS MORTGAGE AND THE OTHER LOAN DOCUMENTS TO BE IMMEDIATELY DUE AND PAYABLE WITHOUT FURTHER DEMAND AND MAY FORECLOSE THIS MORTGAGE BY JUDICIAL PROCEEDING. LENDER SHALL BE ENTITLED TO COLLECT IN SUCH PROCEEDING ALL EXPENSES OF FORECLOSURE, INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES AND COSTS INCLUDING ABSTRACTS AND TITLE REPORTS, ALL OF WHICH SHALL BECOME A PART OF THE SECURED INDEBTEDNESS AND IMMEDIATELY DUE AND PAYABLE, WITH INTEREST AT THE DEFAULT RATE. THE PROCEEDS OF ANY FORECLOSURE SALE OF THE PREMISES SHALL BE APPLIED AS FOLLOWS: FIRST, TO ALL COSTS, EXPENSES AND FEES INCIDENT TO THE FORECLOSURE PROCEEDINGS; SECOND, AS SET FORTH IN PARAGRAPH 3 OF THIS MORTGAGE; AND THIRD, ANY BALANCE TO MORTGAGOR OR AS A COURT MAY DIRECT.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

SECRET

18. Assignment of Leases and Rents. All right, title, and interest of Mortgagor in and to those leases, if any, listed on Exhibit C ("Identified Leases"), and all present and future leases affecting the Premises, written or oral (collectively, "Leases"), and all rents, income, receipts, revenues, issues, avails and profits from or arising out of the Premises (collectively "Rents") are hereby transferred and assigned to Lender as further security for the payment of the Secured Indebtedness, and Mortgagor hereby grants a security interest to Lender in and to the same. If requested by Lender, Mortgagor shall submit all future Leases affecting the Premises to the Lender for its approval prior to execution, and all approved and executed Leases shall be specifically assigned to Lender by an instrument satisfactory to Lender. Each Lease shall, at the option of Lender, be paramount or subordinate to this Mortgage. Mortgagor shall furnish Lender with executed copies of each Lease and, if requested by Lender, with estoppel letters from each tenant, which estoppel letters shall be in a form satisfactory to Lender and shall be delivered not later than thirty (30) days after Lender's written demand.

If, without Lender's prior written consent, Mortgagor: (i) as lessor, fails to perform and fulfill any term, covenant, or provision in any Lease; (ii) suffers or permits to occur any breach or default under the provisions of any separate assignment of any Lease given as additional security for the Secured Indebtedness; (iii) fails to fully protect, insure, preserve, and cause continued performance or fulfillment of the terms, covenants, or provisions, which are required to be performed by the lessee or lessor of any other Lease or Leases hereafter assigned to Lender; (iv) cancels, terminates, or materially amends or modifies any Lease; or (v) permits or approves an assignment by lessee of a Lease or a subletting of all or any part of the Premises demised in the Lease; then such occurrence shall constitute an Event of Default hereunder.

Lender shall have the right to assign Mortgagor's right, title and interest in any Leases to any subsequent holder of this Mortgage or the Note and other Loan Documents or to any person acquiring title to all or any part of the Premises through foreclosure or otherwise.

Upon an Event of Default, this Mortgage shall constitute a direction to each lessee under the Leases and each guarantor thereof, if any, to pay all Rents directly to Lender. Lender will provide each lessee with proof of the Event of Default. Lender shall have the authority, as Mortgagor's attorney-in-fact (such authority being coupled with an interest and irrevocable) to sign the name of Mortgagor and to bind Mortgagor on all papers and documents relating to the operation, leasing and maintenance of the Premises. While this assignment is a present assignment, Lender shall not exercise any of the rights or powers conferred upon it by this paragraph until an Event of Default shall occur under this Mortgage.

If Mortgagor as lessor, shall neglect or refuse to perform and keep all of the covenants and agreements contained in the Lease or Leases, then Lender may perform and comply with any such Lease covenants and agreements. All related costs and expenses incurred by the Lender shall become a part of the Secured Indebtedness and shall be due and payable upon demand by Lender with interest thereon accruing thereafter at the Default Rate.

Lender, however, shall not be obligated to perform or discharge any obligation, duty or liability under any Lease. Mortgagor shall, defend, protect, indemnify and hold Lender harmless from and against any and all liability, loss, cost or damage to Lender under the Leases or under or by reason of their assignments and of and from any and all claims and demands whatsoever which may be asserted against Lender by reason of any alleged obligations or undertakings on its part to perform or discharge any Lease terms, covenants or agreements. The amount of any such liability, loss or damage arising under the Leases or under or by reason of their assignment, or in the defense of any claims or demands, including costs, expenses and reasonable attorneys' fees, incurred by Lender shall be a part of the Secured Indebtedness due and payable upon demand with interest thereon accruing thereafter at the Default Rate.

19. Appointment of Receiver. Lender will provide Mortgagor with written notice of acceleration five days before acceleration. Upon acceleration under Paragraphs 15 and 17, and without further notice to Mortgagor, Lender shall be

UNOFFICIAL COPY

Property of Cook County Clerk's Office

entitled to have a receiver appointed by a court to enter upon, take possession of and manage the Premises and to collect the Rents from the Premises including those past due. The receiver shall have the power to collect the Rents from the time of acceleration through the pendency of any foreclosure proceeding and during the full statutory period of redemption, if any. All Rents collected by the receiver shall be applied as the appointing court may direct and, in the absence of such direction, first to payment of the costs and expenses of the management of the Premises and collection of Rents including, but not limited to, receiver's fees, premiums on receiver's bonds and reasonable attorneys' fees, and then as provided in Paragraph 2. The receiver shall be liable to account only for those Rents actually received.

20. Release. Upon payment of all Secured Indebtedness, Lender shall release this Mortgage upon payment by Mortgagor of all costs and fees to release same if any. Mortgagor shall be responsible for recording the release, including all related costs of recordation.

21. Security Agreement. Without limiting any other provisions of this Mortgage, this Mortgage constitutes a Security Agreement under the Uniform Commercial Code of the State of Illinois (herein called the "Code") with respect to all fixtures, apparatus, equipment or articles, and all replacements and substitutions, now or hereafter located on the Premises as set forth in the description of the Premises above, including but not limited to the air-conditioning, heating, gas, water, power, light, refrigeration, and ventilation systems which are presently located at the Premises, and with respect to all Awards, and all Funds and other sums which may be deposited with Lender pursuant hereto (all for the purposes of this paragraph called "Collateral"), and Mortgagor hereby grants to Lender a security interest in such Collateral. 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 Premises. When the Secured Indebtedness shall become due, whether by acceleration or otherwise, Lender shall have all remedies of a secured party under the Code. This Mortgage is intended to be a financing statement with respect to any of the Collateral which constitute "fixtures" within the meaning of the Code. Mortgagor shall execute and deliver to Lender any other financing statements necessary to perfect the security interest in the Collateral created hereby. Any Code requirement for reasonable notice shall be met if such notice is delivered as provided herein at least five (5) days prior to the time of any sale, disposition, or other event or matter giving rise to the notice (which period of time and method of notice is agreed to be commercially reasonable).

22. Waiver of Redemption. Notwithstanding anything to the contrary herein contained, to the fullest extent permitted by the laws of the State of Illinois, Mortgagor hereby waives any and all rights of redemption from sale under any order, judgment or decree of foreclosure, on behalf of Mortgagor, and on behalf of (i) each and every person acquiring any interest in or title to the Premises subsequent to the date of this Mortgage; (ii) any trust estate of which the Premises is a part and all beneficiaries of such trust estate; and (iii) all other persons.

23. Business Loan. Mortgagor hereby represents that: (a) the proceeds of the Secured Indebtedness (the "Loan") will be used for the purposes specified in Section 6404(1)(a) or (c) of Chapter 17 of the Illinois Revised Statutes, as amended; (b) the Loan constitutes a "business loan" within the purview of that Section; (c) the Loan is a transaction exempt from the Truth in Lending Act, 15 U.S.C. §1601, et seq.; and (d) the proceeds of the Indebtedness will not be used for the purchase of registered equity securities within the purview of Regulation "U" issued by the Board of Governors of the Federal Reserve System.

24. Environmental Matters

A. Definitions. For purposes of this Mortgage, "Hazardous Material" means: (i) "hazardous substances", as defined by the Comprehensive Environmental Response, Compensation, and the Liability Act ("CERCLA"), 42 U.S.C. §9601 et seq.; the Illinois Environmental Protection Act ("Illinois Environmental Act"), Ill. Rev. Stat. ch 111-1/2, §1001 et seq.; (ii) "hazardous wastes", as defined by the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §6902 et seq.; (iii) any pollutant or contaminant

UNOFFICIAL COPY

Property of Cook County Clerk's Office

000000000000

or hazardous, dangerous or toxic chemicals, materials, or substances within the meaning of any other applicable federal, state, or local law, regulation, ordinance, or requirement (including consent decrees and administrative orders) relating to or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material, all as amended or hereafter amended; (iv) more than 100 gallons of crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute); (v) any radioactive material, including any source, special nuclear or by-product material as defined at 42 U.S.C. §2011 et seq., as amended or hereafter amended; and (vi) asbestos in any form or condition.

B. Representations. To the best of Mortgagor's knowledge and belief Mortgagor hereby represents and warrants to Lender that:

1. Compliance. The Premises (which includes underlying groundwater and areas leased to tenants, if any), and the use and operation thereof, have been and are currently in compliance with all applicable laws, ordinances, requirements and regulations (including consent decrees and administrative orders) relating to public health and safety and protection of the environment, including those statutes, laws, regulations, and ordinances identified in subparagraph A. above, all as amended and modified from time-to-time (collectively, "Environmental Laws"). All required governmental permits and licenses are in effect, and Mortgagor is in compliance therewith. All Hazardous Material generated or handled on the Premises has been disposed of in a lawful manner.

2. Absence of Hazardous Material. No generation, manufacture, storage, treatment, transportation or disposal of Hazardous Material has occurred or is occurring on or from the Premises, except as has been disclosed in writing to and approved by Lender ("Permitted Material"). No environmental or public health or safety hazards currently exist with respect to the Premises or the business or operations conducted thereon. No underground storage tanks (including petroleum storage tanks) are present on or under the Premises except as has been disclosed in writing to and approved by Lender ("Permitted Tanks").

3. Proceedings and Actions. There have been no past, and there are no pending or threatened: (i) actions or proceedings by any governmental agency or any other entity regarding public health risks or the environmental condition of the Premises, or the disposal or presence of Hazardous Material, or regarding any Environmental Law; or (ii) liens or governmental actions, notices of violations, notices of noncompliance or other proceedings of any kind that could impair the value of the Premises, or the priority of the Mortgage Lien or of any of the other Loan Documents.

C. Mortgagor's Covenants. Mortgagor hereby covenants with Lender as follows:

1. Compliance. The Premises and the use and operation thereof, will remain in compliance with all Environmental Laws. All required governmental permits and licenses will remain in effect, and Mortgagor shall comply therewith. All Hazardous Material present, handled or generated on the Premises will be disposed of in a lawful manner. Mortgagor will satisfy all requirements of applicable Environmental Laws for the maintenance and removal of all underground storage tanks on the Premises if any. Without limiting the foregoing, all Hazardous Material shall be handled in compliance with all applicable Environmental Laws.

2. Absence of Hazardous Material. Other than Permitted Material, no Hazardous Material shall be introduced to or handled on the Premises without twenty-one (21) days' prior written notice to Lender.

3. Proceedings and Actions. Mortgagor shall immediately notify Lender and provide copies upon receipt of all written complaints, claims, citations, demands, inquiries, reports, or notices relating to the condition of the Premises or compliance with Environmental Laws. Mortgagor shall promptly cure and have dismissed with prejudice any such actions and proceedings to the satisfaction of Lender. Mortgagor shall keep the Premises free of any lien imposed pursuant to any Environmental Laws.

92542917

UNOFFICIAL COPY

Property of Cook County Clerk's Office

0801003

4. Environmental Audit. Mortgagor shall provide such information and certifications which Lender may reasonably request from time to time to insure Mortgagor's compliance with this Paragraph 24. To investigate Mortgagor's compliance with Environmental Laws and with this Paragraph, Lender shall have the right, but no obligation, at any time to enter upon the Premises, take samples, review Mortgagor's books and records, interview Mortgagor's employees and officers, and conduct similar activities. Mortgagor shall cooperate in the conduct of such an audit.

D. Lender's Right to Rely. Lender is entitled to rely upon Mortgagor's representations and warranties contained in this Paragraph 27 despite any independent investigations by Lender or its consultants. The Mortgagor shall take reasonable actions to determine for itself, and to remain aware of, the environmental condition of the Premises and shall have no right to rely upon any environmental investigations or findings made by Lender or its consultants.

E. Indemnification. Mortgagor agrees to indemnify, defend (at trial and appellate levels and with counsel acceptable to Lender and at Mortgagor's sole cost), and hold Lender and Lender's parent and subsidiary corporations, and their affiliates, shareholders, directors, officers, employees, and agents (collectively, "Lender's Affiliates"), free and harmless from and against all loss, liabilities, obligations, penalties, claims, litigation, demands, defenses, costs, judgments, suits, proceedings, damages (including consequential damages), disbursements or expenses of any kind or nature whatsoever (including attorneys' fees at trial and appellate levels and experts' fees and disbursements and expenses incurred in investigating, defending against or prosecuting any litigation, claim or proceeding) which may at any time be imposed upon, incurred by or asserted or awarded against Lender or any Lender's Affiliates in connection with or arising from:

1. any Hazardous Material on, in, under or affecting all or any portion of the Premises, the groundwater, or any surrounding areas;
2. any misrepresentation, inaccuracy or breach of any warranty, covenant or agreement contained or referred to in this Paragraph 24;
3. any violation or claim of violation by Mortgagor of any Environmental Laws; or
4. the imposition of any lien for damages caused by or the recovery of any costs for the cleanup, release or threatened release of Hazardous Material.

The foregoing indemnification shall survive repayment of the Note or any transfer of the Premises by foreclosure or by a deed in lieu of foreclosure. Mortgagor, its successors and assigns, hereby waives, releases and agrees not to make any claim or bring any cost recovery action against Lender under CERCLA or any state equivalent, or any similar law now existing or hereafter enacted. It is expressly understood and agreed that to the extent that Lender is strictly liable under any Environmental Laws, Mortgagor's obligation to Lender under this indemnity shall likewise be without regard to fault on the part of Mortgagor with respect to the violation or condition which results in liability to Lender.

25. Interpretation. This Mortgage shall be construed pursuant to the laws of the State of Illinois. The headings of sections and paragraphs in this Mortgage are for convenience only and shall not be construed in any way to limit or define the content, scope, or intent of the provisions. The use of singular and plural nouns, and masculine, feminine, and neuter pronouns, shall be fully interchangeable, where the context so requires. If any provision of this Mortgage, or any paragraph, sentence, clause, phrase or word, or the application thereof, in any circumstances, is adjudicated to be invalid, the validity of the remainder of this Mortgage shall be construed as if such invalid part were never included. Time is of the essence of the payment and performance of this Mortgage.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

00000000

UNOFFICIAL COPY

- 11 -

26. Compliance with Illinois Mortgage Foreclosure Law. If any provision in this Mortgage shall be inconsistent with any provision of the Illinois Mortgage Foreclosure Law (Chapter 110, Sections 15-1101 et seq., Illinois Revised Statutes) (the "Act") the provisions of the Act shall take precedence over the Mortgage provisions, but shall not invalidate or render unenforceable any other Mortgage provision that can be construed in a manner consistent with the Act.

If any Mortgage provision shall grant to Lender any rights or remedies upon Mortgagor's default which are more limited than the rights that would otherwise be vested in Lender under the Act in the absence of such provision, Lender shall be vested with the rights granted in the Act to the full extent permitted by law.

Without limiting the generality of the foregoing, all expenses incurred by Lender to the extent reimbursable under Sections 15-1510 and 15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated in Paragraph 19 of this Mortgage, shall be added to the Indebtedness secured by this Mortgage or by the judgment of foreclosure.

IN WITNESS WHEREOF, Mortgagor has executed this Mortgage.

TWEEMARK ENTERPRISES,
an Illinois General Partnership

By: 

Michael Mandell, Partner

By: 

Mark Kaufman, Partner

6770

92542917

UNOFFICIAL COPY

Property of Cook County Clerk's Office

00210013

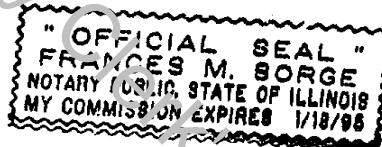
STATE OF)
) ss.
COUNTY OF)

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that Michael Mandell and Mark Kaufman, Partners in Tweemark Enterprises, an Illinois General Partnership, personally known to me to be the same person(s) who(s) name(s) is are subscribed to the foregoing instrument, appeared before me this day and acknowledged that they signed and delivered the said instrument as their free and voluntary act, for the uses and purposes therein set forth, and as the free and voluntary act of the Partnership.

Given under my hand and notarial seal this 7th day of JULY, 19 92.

Frances M. Sorge
NOTARY PUBLIC

MY COMMISSION EXPIRES 1-18-95



92542917

UNOFFICIAL COPY

Property of Cook County Clerk's Office

1000000

UNOFFICIAL COPY

EXHIBIT A

Unit Numbers 1, 2, and 3 in 924 West Barry Condominium, as delineated on the Plat of Survey of the following described real estate:

The West 16 feet of Lot 15 and the East 17 feet of Lot 16 in Block 3 in Gehrke and Erauckman's Subdivision of Block 1 (except 4.28 acres in the North part of said Block 1, West of Green Bay Road) in Canal Trustees' Subdivision of the East 1/2 of Section 29, Township 40 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois, which survey is attached as Exhibit "A" to the Declaration of Condominium recorded October 26, 1979 as Document 252128850, together with their undivided percentage interest in the common elements.

Property of Cook County Clerk's Office

92542917

UNOFFICIAL COPY

Property of Cook County Clerk's Office

PROPERTY

UNOFFICIAL COPY 9 2 5 4 2 9 1

EXHIBIT B
PERMITTED ENCUMBRANCES

None

Property of Cook County Clerk's Office

92542917

UNOFFICIAL COPY

Property of Cook County Clerk's Office

00000000