

# UNOFFICIAL COPY

RETURN TO: BOX 26

THIS MORTGAGE PREPARED BY AND RECORDED COPY SHOULD BE SENT TO:

Joel M. Hurwitz  
Neal Herber & Eisenberg  
Two North La Salle Street, #2200  
Chicago, Illinois 60602

Recorder's Office Box No. 26 SECOND MORTGAGE,  
SECURITY AGREEMENT AND FINANCING STATEMENT,  
WITH ASSIGNMENT OF RENTS

92759712

THIS MORTGAGE made this 30th day of September, 1992, by

92759712

ERIC C. JOHNSTONE

DEPT. OF RECORDING \$37.00  
132032 TRAN 0491 10/13/92 13:57:00  
13794 : B \* 92-759712  
CLARK COUNTY RECORDER

(herein, whether one or more, and if more than one jointly and severally, called the "Mortgagor") to

JOSEPH EISENBERG

(herein together with its successors and assigns, including each and every from time to time holder of the Note hereinafter referred to, called the "Mortgagee"),

WHEREAS, the Mortgagor on or about September 8, 1992, executed and delivered to the Mortgagee, the Mortgagor's installment note (herein called the "Note") dated the date hereof in the principal sum of \$80,387.00 September 8, 1992,

bearing interest at the rate specified therein, due in installments and in any event on

January 1, 2008

payable to the order of the Mortgagee, and otherwise in the form of note attached hereto as Exhibit A and made a part hereof; and

WHEREAS, the indebtedness evidenced by the Note, including the principal thereof and interest and premium, if any, thereon, and any extensions and renewals thereof, in whole or in part, and any and all other sums which may be at any time due or owing or required to be paid as herein or in the Note provided, are herein called the "Indebtedness Hereby Secured" and

NOW, THEREFORE, THIS MORTGAGE WITNESSETH:

That to secure the payment of the principal of and interest and premium, if any, on the Note according to its tenor and effect and to secure the payment of all other Indebtedness Hereby Secured and the performance and observance of all the covenants, provisions and agreements herein and in the Note contained (whether or not the Mortgagor is personally liable for such payment, performance and observance) and in consideration of the premises and Ten Dollars (\$10) in hand paid by the Mortgagee to the Mortgagor, and for other good and valuable considerations, the receipt and sufficiency of all of which is hereby acknowledged by the Mortgagor, the Mortgagor does hereby GRANT, RELEASE, REMISE, ALIEN, MORTGAGE and CONVEY unto the Mortgagee all and sundry the property (herein together with the property mentioned in the next succeeding paragraphs hereto, called the "Premises") described in Exhibit B attached hereto and made a part hereof.

TOGETHER with, and including within the term "Premises," as used herein, any and all improvements, tenements, buildings, easements, fixtures, privileges, reservations, allowances, hereditaments and appurtenances now or hereafter thereunto belonging or pertaining; any and all rights and estates in reversion or remainder; and any and all rights and interests of every name and nature now or hereafter owned by the Mortgagor, forming a part of and/or used in connection with the real estate and/or the operation and convenience of the buildings and improvements located thereon; including, by way of enumeration but without limitation, any and all items specifically described in Exhibit B attached hereto and made a part hereof; all machines, machinery, fixtures, apparatus, equipment or articles used to supply heating, gas, electricity, air conditioning, water, light, power, sprinkler protection, waste removal, refrigeration and ventilation, and all floor coverings, screens, storm windows, blinds, awnings, stoves, refrigerators, dishwashers, disposal units, range hoods and blowers; in each case now or hereafter placed in, on or at the Premises (it being understood that the enumeration of any specific articles of property shall in no wise exclude or be held to exclude any items of property not specifically enumerated).

AND TOGETHER WITH all of the rents, income, receipts, revenues, issues and profits thereof and therefrom; AND all of the land, estate, property and rights hereinabove described and hereby conveyed and intended so to be, whether real, personal or mixed, and whether or not affixed or annexed to the real estate are intended to be as a unit and are hereby understood, agreed and declared to form a part and parcel of the real estate and to be appropriated to the use of the real estate and for the purposes hereof shall be deemed to be real estate conveyed and mortgaged hereby.

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

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

\* WHEREAS, the Mortgagor is the owner as tenant in common of an undivided fifty percent (50%) of the Premises as defined hereinafter.

\*\*an undivided fifty percent (50%) ownership interest as tenant in common of

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AND IT IS FURTHER AGREED THAT

1. **Payment of Indebtedness.** The Mortgagor will duly and promptly pay each and every installment of the principal of and interest and premium, if any, on the Note, and all other Indebtedness Hereby Secured, as the same become due, and will duly perform and observe all of the covenants, agreements and provisions herein or in the Note provided on the part of the Mortgagor to be performed and observed.

2. **Maintenance, Repair, Restoration, Prior Liens, Etc.** The Mortgagor will (a) promptly repair, restore or rebuild any buildings or improvements now or hereafter on the Premises which may become damaged or be destroyed; (b) keep the Premises in good condition and repair, without waste, and free from mechanics', materialmen's or like liens or claims or other liens or claims for lien not expressly subordinated to the lien hereof; (c) pay, when due, any indebtedness which may be secured by a lien or charge on the Premises superior to the lien hereof, and upon request exhibit satisfactory evidence of the discharge of such prior lien to the Mortgagee; (d) complete, within a reasonable time, any building or buildings now or at any time in the process of erection upon the Premises; (e) comply with all requirements of law, municipal ordinances or restrictions and covenants of record with respect to the Premises and the use thereof; (f) make no material alterations in the Premises, except as required by law or municipal ordinance; (g) suffer or permit no change in the general nature of the occupancy of the Premises without the Mortgagee's prior written consent; (h) pay all operating costs of the Premises and (i) initiate or acquiesce in no zoning reclassification with respect to the Premises, without the Mortgagee's prior written consent.

3. **Taxes.** The Mortgagor will pay when due and before any penalty attaches, all general and special taxes, assessments, water charges, sewer charges, and other fees, taxes, charges and assessments of every kind and nature whatsoever (all hereinafter generally called "Taxes"), whether or not assessed against the Mortgagor, if applicable to the Premises or any interest therein, or the Indebtedness Hereby Secured, or any obligation or agreement secured hereby, and Mortgagor will, upon written request, furnish to the Mortgagee duplicate receipts therefor. To prevent default thereunder, the Mortgagor will pay in full under protest in the manner provided by statute, any Taxes which the Mortgagor may desire to contest; provided, however, that if deferment of payment of any such Taxes is required to conduct any contest or review, the Mortgagor shall deposit the full amount thereof, together with an amount equal to the estimated interest and penalties thereon during the period of contest, with the Mortgagee. In any event, Mortgagor shall (and if Mortgagor shall fail so to do, the Mortgagee may, but shall not be required to, and for the purpose may use the monies deposited as aforesaid) pay all Taxes, notwithstanding such contest, if in the opinion of the Mortgagee, the Premises shall be in jeopardy or in danger of being forfeited or foreclosed. In the event that any law or court decree has the effect of deducting from the value of land for the purpose of taxation any lien thereon, or imposing upon the Mortgagee the payment of the whole or any part of the Taxes or liens herein required to be paid by the Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or the interest of the Mortgagee in the Premises or the manner of collection of Taxes, so as to affect this Mortgage or the Indebtedness Hereby Secured or the holder thereof, then, and in any such event, the Mortgagor upon demand by the Mortgagee, will pay such Taxes, or reimburse the Mortgagee therefor. Nothing in this Section 3 contained shall require the Mortgagor to pay any income, franchise or excise tax imposed upon the Mortgagee, excepting only such which may be levied against such income expressly as and for a specific substitute for Taxes on the Premises, and then only in an amount computed as if the Mortgagee derived no income from any source other than its interest hereunder.

4. **Insurance Coverage.** The Mortgagor will insure and keep insured all of the buildings and improvements now or hereafter constructed or erected upon the Premises and each and every part and parcel thereof, against such perils and hazards as the Mortgagee may from time to time require, and in any event including:

- (a) Insurance against loss by fire, risks covered by the so-called extended coverage endorsement, and other risks as the Mortgagee may reasonably require, in amounts equal to the full replacement value of the Premises;
- (b) Public liability insurance against bodily injury and property damage with such limits as the Mortgagee may require;
- (c) ~~Rental insurance in amounts sufficient to pay during any period of up to one (1) year in which the Premises may be damaged or destroyed all amounts required hereunder to be paid by the Mortgagor;~~
- (d) Steam boiler, machinery and other insurance of the types and in amounts as the Mortgagee may require but in any event not less than customarily carried by persons owning or operating like properties.

5. **Insurance Policies.** All policies of insurance to be maintained and provided as required by Section 4 hereof shall be in forms, companies and amounts reasonably satisfactory to the Mortgagee and all policies of casualty insurance shall have attached thereto mortgagee clauses or endorsements in favor of and with loss payable to and in form satisfactory to the Mortgagee. The Mortgagor will deliver all policies, including additional and renewal policies to the Mortgagee and, in case of insurance policies about to expire, the Mortgagor will deliver renewal policies not less than ten (10) days prior to the respective dates of expiration.

~~Deposits for Taxes and Insurance Premiums. In order to assure the payment of taxes and insurance premiums payable with respect to the Premises as and when the same shall become due and payable:~~

- (a) The Mortgagor shall deposit with the Mortgagee on the first day of each and every month, commencing with the date the first payment of interest and/or principal and interest shall become due on the Indebtedness Hereby Secured, an amount equal to:
  - (i) One-Twelfth (1/12) of the Taxes next to become due upon the Premises; provided that in the case of the first such deposit, there shall be deposited in addition an amount equal to one-twelfth (1/12) of such Taxes next to become due on the Premises multiplied by the number of months elapsed between the first day of January of the year succeeding the last year for which all Taxes on the Premises have been paid and the date of such first deposit, plus
  - (ii) One-Twelfth (1/12) of the annual premiums on each policy of insurance upon the Premises, provided that with the first such deposit there shall be deposited in addition, an amount equal to one-twelfth (1/12) of such annual insurance premiums multiplied by the number of months elapsed between the date premiums on each policy were last paid to and including the date of deposit;provided, that the amount of such deposits (herein generally called "Tax and Insurance Deposits") shall be based upon Mortgagee's reasonable estimate as to the amount of Taxes and premiums of insurance next to be payable, and all Tax and Insurance Deposits shall be held by the Mortgagee without any allowance of interest thereon.
- (b) The aggregate of the monthly Tax and Insurance Deposits, together with monthly payments of interest and/or principal and interest payable on the Note shall be paid in a single payment each month, to be applied to the following items in the order stated:
  - (i) Taxes and insurance premiums;
  - (ii) Indebtedness Hereby Secured other than principal and interest on the Note;
  - (iii) Interest on the Note;
  - (iv) Amortization of the principal balance of the Note.

(c) The Mortgagee will, out of the Tax and Insurance Deposits, upon the presentation to the Mortgagee by the Mortgagor of the bills therefor, pay the insurance premiums and Taxes or will, upon presentation of receipted bills therefor, reimburse the Mortgagor for such payments made by the Mortgagor. If the total Tax and Insurance Deposits on hand shall not be sufficient to pay all of the Taxes and insurance premiums when the same shall become

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~~And then the Mortgagee shall pay to the Mortgagee on demand any amount necessary to make up the deficiency of the total of such Deposits exceed the amount required to pay the Taxes and insurance premiums, such excess shall be credited on subsequent payments to be made for such items.~~

- (d) In the event of a default in any of the provisions contained in this Mortgage or in the Note, the Mortgagee may, at its option, without being required so to do, apply any Tax and Insurance Deposits on hand on any of the Indebtedness Hereby Secured, in such order and manner as the Mortgagee may elect. ~~When the Indebtedness Hereby Secured has been fully paid, then any remaining Tax and Insurance Deposits shall be paid to the Mortgagee. All Tax and Insurance Deposits are hereby pledged as additional security for the Indebtedness Hereby Secured, and shall be held in trust to be irrevocably applied for the purposes for which made as herein provided, and shall not be subject to the direction or control of the Mortgagee.~~
- (e) ~~Notwithstanding anything to the contrary herein contained, the Mortgagee shall not be liable for any failure to apply to the payment of Taxes and insurance premiums any amounts deposited as Tax and Insurance Deposits unless the Mortgagee, while no default exists hereunder, shall have requested the Mortgagee in writing to make application of such Deposits on hand to the payment of the particular Taxes or insurance premiums for the payment of which such Deposits were made accompanied by the bills thereon.~~

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

- (a) In case of loss covered by policies of insurance, the Mortgagee (or, after entry of decree of foreclosure, the Purchaser at the foreclosure sale or decree creditor, as the case may be) is hereby authorized at its option either (i) to settle and adjust any claim under such policies without the consent of the Mortgagee, or (ii) allow the Mortgagee to agree with the insurance company or companies on the amount to be paid upon the loss; provided, that the Mortgagee may itself adjust losses aggregating not in excess of Five Thousand Dollars (\$5,000), and provided further that in any case the Mortgagee shall, and is hereby authorized to, collect and receipt for any such insurance proceeds; and the expenses incurred by the Mortgagee in the adjustment and collection of insurance proceeds shall be so much additional Indebtedness Hereby Secured, and shall be reimbursed to the Mortgagee upon demand.
- (b) In the event of any insured damage to or destruction of the Premises or any part thereof (herein called an "Insured Casualty"), and:
- (i) If, in the reasonable judgment of the Mortgagee, the Premises can be restored to an economic unit not less valuable than the same was prior to the Insured Casualty, and adequately securing the outstanding balance of the Indebtedness Hereby Secured, or
- (ii) If, under the terms of any lease or leases which may be prior to this Mortgage, the Mortgagee is obligated to restore, repair, replace or rebuild the Premises or any part thereof so damaged or destroyed, and such Insured Casualty does not result in cancellation or termination of such lease or leases and the insurers do not deny liability to the insureds,

then, if no Event of Default as herein defined shall have occurred and be then continuing and the Mortgagee shall not be in default hereunder, the proceeds of insurance shall be applied to reimburse the Mortgagee for the cost of restoring, repairing, replacing or rebuilding the Premises or part thereof subject to Insured Casualty, as provided for in Section 8 hereof; and the Mortgagee hereby covenants and agrees forthwith to commence and to diligently prosecute such restoring, repairing, replacing or rebuilding; provided, always, that the Mortgagee shall pay all costs of such restoring, repairing, replacing or rebuilding in excess of the proceeds of insurance.

- (c) Except as provided for in Subsection (b) of this Section 7, the Mortgagee may apply the proceeds of insurance consequent upon any Insured Casualty upon the Indebtedness Hereby Secured, in such order or manner as the Mortgagee may elect.
- (d) In the event that proceeds of insurance, if any, shall be made available to the Mortgagee for the restoring, repairing, replacing or rebuilding of the Premises, the Mortgagee hereby covenants to restore, repair, replace or rebuild the same, to be of at least equal value, and of substantially the same character as prior to such damage or destruction; all to be effected in accordance with plans and specifications to be first submitted to and approved by the Mortgagee.

8. **Disbursement of Insurance Proceeds.** In the event the Mortgagee is entitled to reimbursement out of insurance proceeds held by the Mortgagee, such proceeds shall be disbursed from time to time upon the Mortgagee being furnished with satisfactory evidence of the estimated cost of completion of the restoration, repair, replacement and rebuilding with funds (or assurances satisfactory to the Mortgagee that such funds are available) sufficient in addition to the proceeds of insurance, to complete the proposed restoration, repair, replacement and rebuilding and with such architect's certificates, waivers of lien, contractors' sworn statements and such other evidences of cost and of payment as the Mortgagee may reasonably require and approve; and the Mortgagee may, in any event, require that all plans and specifications for such restoration, repair, replacement and rebuilding be submitted to and approved by the Mortgagee prior to commencement of work. No payment made prior to the final completion of the restoration, repair, replacement or rebuilding shall exceed Ninety Per Cent (90%) of the value of the work performed from time to time; funds other than proceeds of insurance shall be disbursed prior to disbursement of such proceeds; and at all times the undischursed balance of such proceeds remaining in the hands of the Mortgagee, together with funds deposited for the purpose or irrevocably committed to the satisfaction of the Mortgagee by or on behalf of the Mortgagee for the purpose, shall be at least sufficient in the reasonable judgment of the Mortgagee to pay for the cost of completion of the restoration, repair, replacement or rebuilding, free and clear of all liens or claims for lien. No interest shall be allowed to the Mortgagee on account of any proceeds of insurance or other funds held in the hands of the Mortgagee.

9. **Condemnation.** The Mortgagee hereby assigns, transfers and sets over unto the Mortgagee the entire proceeds of any award or claim for damages for any of the Premises taken or damaged under the power of eminent domain, or by condemnation. The Mortgagee may elect to apply the proceeds of the award upon or in reduction of the Indebtedness Hereby Secured then most remotely to be paid, whether due or not, or to require the Mortgagee to restore or rebuild the Premises, in which event, the proceeds shall be held by the Mortgagee and used to reimburse the Mortgagee for the cost of such rebuilding or restoring. If the Mortgagee is obligated to restore or replace the damaged or destroyed buildings or improvements upon the Premises under the terms of any lease or leases which are or may be prior to the lien of this Mortgage, and if such taking does not result in cancellation of such lease or leases, the award shall be used to reimburse the Mortgagee for the cost of restoration and rebuilding, provided always, that Mortgagee is not in default hereunder and that no Event of Default has occurred and is then continuing. If the Mortgagee is required or permitted to rebuild or restore the Premises as aforesaid, such rebuilding or restoration shall be effected solely in accordance with plans and specifications previously submitted to and approved by the Mortgagee, and proceeds of the award shall be paid out in the same manner as is provided in Section 8 hereof for the payment of insurance proceeds towards the cost of rebuilding or restoration. If the amount of such award is insufficient to cover the cost of rebuilding or restoration, the Mortgagee shall pay such costs in excess of the award, before being entitled to reimbursement out of the award. Any surplus which may remain out of the award after payment of such costs of rebuilding or restoration shall, at the option of the Mortgagee, be applied on account of the Indebtedness Hereby Secured, then most remotely to be paid, or be paid to any other party entitled thereto. No interest shall be allowed to Mortgagee on account of any award held by Mortgagee.

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

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11. **Prepayment Privilege.** At such time as the Mortgagor is not in default under the terms of the Note, or under the terms of this Mortgage, the Mortgagor shall have the privilege of making prepayments on the principal of the Note (in addition to the required payments thereunder) in accordance with the terms and conditions, if any, set forth in the Note, but not otherwise.

12. **Effect of Extensions of Time, Amendments on Junior Liens and Others.** If the payment of the Indebtedness Hereby Secured, or any part thereof, be extended or varied, or if any part of the security be released, all persons now or at any time hereafter liable therefor, or interested in the Premises, shall be held to assent to such extension, variation or release, and their liability, and the lien, and all provisions hereof, shall continue in full force and effect; the right of recourse against all such persons being expressly reserved by the Mortgagee, notwithstanding any such extension, variation or release. Any person, firm or corporation taking a junior mortgage, or other lien upon the Premises or any interest therein, shall take the said lien subject to the rights of the Mortgagee herein to amend, modify and supplement this Mortgage, the Note and the Assignment hereinafter referred to, and to extend the maturity of the Indebtedness Hereby Secured, in each and every case without obtaining the consent of the holder of such junior lien and without the lien of this Mortgage losing its priority over the rights of any such junior lien.

13. **Effect of Changes in Tax Laws.** In the event of the enactment after the date hereof by any legislative authority having jurisdiction of the Premises of any law deducting from the value of land for the purposes of taxation, any lien thereon, or imposing upon the Mortgagee the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by the Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or the Mortgagee's interest in the Premises, or the method of collecting taxes, so as to affect the Mortgage or the Indebtedness Hereby Secured, or the holder thereof, then, and in any such event, the Mortgagor, upon demand by the Mortgagee, shall pay such taxes or assessments, or reimburse the Mortgagee therefor.

14. **Mortgagee's Performance of Mortgagor's Obligations.** In case of default therein, the Mortgagee may, but shall not be required to make any payment or perform any act herein required of the Mortgagor (whether or not the Mortgagor is personally liable therefor) in any form and manner deemed expedient to the Mortgagee; and the Mortgagee may, but shall not be required to, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting the Premises, or contest any tax or assessment. All monies paid for any of the purposes herein authorized, and all expenses paid or incurred in connection therewith, including attorneys' fees and any other monies advanced by the Mortgagee to protect the Premises and the lien hereof, shall be so much additional Indebtedness Hereby Secured, and shall become immediately due and payable without notice, and with interest thereon at the ~~Default Rate~~ <sup>Default Rate</sup> specified in the Note (herein called the "Default Rate"). Inaction of the Mortgagee shall never be considered as a waiver of any right accruing to it on account of any default on the part of the Mortgagor. The Mortgagee, in making any payment hereby authorized (a) relating to taxes and assessments, may do so according to any bill, statement or estimate, without inquiry into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof; or (b) for the purchase, discharge, compromise or settlement of any other prior lien, may do so without inquiry as to the validity or amount of any claim for lien which may be asserted.

15. **Inspection of Premises.** The Mortgagee shall have the right to inspect the Premises at all reasonable times, and access thereto shall be permitted for that purpose.

16. **Financial Statements.** The Mortgagor will, within ninety (90) days after the end of each Loan Year (as in the Note defined) furnish to the Mortgagee at the place where interest hereon is then payable, financial and operating statements of the Premises for such Loan Year, all in reasonable detail and in any event including such itemized statements of receipts and disbursements as shall enable Mortgagee to determine whether any default exists hereunder or under the Note. ~~Such financial and operating statements shall be prepared and certified at the expense of Mortgagor in such manner as may be acceptable to the Mortgagee, and the Mortgagee may, by notice in writing to the Mortgagor, require that the same be prepared and certified, pursuant to audit, by a firm of independent certified public accountants satisfactory to Mortgagee, in which case such accountants shall state whether or not there is any default or event of default hereunder or under the Note.~~

17. **Restrictions on Transfer.** It shall be an immediate Event of Default and default hereunder if, without the prior written consent of the Mortgagee:

- (a) The Mortgagor shall create, effect or consent to or shall suffer or permit any conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation of the Premises or any part thereof, or interest therein, excepting only sales or other dispositions of Collateral (herein called "Obsolete Collateral") no longer useful in connection with the operation of the Premises, provided that prior to the sale or other disposition thereof, such Obsolete Collateral has been replaced by Collateral, subject to the first and prior lien hereof, of at least equal value and utility.
- ~~(b) Any beneficiary of the Mortgagee, if the Mortgagee is a Trustee, shall or consent or assent to, or shall suffer or permit, any sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation of such beneficiary's beneficial interest in the Mortgagee.~~
- ~~(c) Any shareholder of the Mortgagee, if the Mortgagee is a corporation, shall or consent or assent to, or shall suffer or permit any sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation of any such shareholder's share in the Mortgagee.~~
- ~~(d) Any partner or joint venturer, if the Mortgagee is a partnership or joint venture, shall or consent or assent to, or shall suffer or permit any sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation of any part of the partnership or joint venture interest, as the case may be, of such partner or joint venturer in the Mortgagee.~~

in each case whether any such conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest, encumbrance or alienation is effected directly, indirectly, voluntarily or involuntarily, by operation of law or otherwise; provided, that the foregoing provisions of this Section 17 shall not apply (i) to liens securing the Indebtedness Hereby Secured; (ii) to the lien of current taxes and assessments not in default or (iii) to any transfers of the Premises, or part thereof, or interest therein, or any beneficial interests, or shares of stock or partnership or joint venture interests as the case may be, in the Mortgagor, by or on behalf of an owner thereof who is deceased or declared judicially incompetent, to such owner's heirs, legatees, devisees, executors, administrators, estate, personal representatives and/or committee. The provisions of this Section 17 shall be operative with respect to, and shall be binding upon, any persons who, in accordance with the terms hereof or otherwise, shall acquire any part of or interest in or encumbrance upon the Premises, or such beneficial interest in, share of stock of or partnership or joint venture interest in the Mortgagor. \*and liens of record on the date of this Mortgage

18. **Uniform Commercial Code.** This Mortgage constitutes a Security Agreement under the Uniform Commercial Code of the State of Ill. (herein called the "Code") with respect to any part of the Premises which may or might now or hereafter be or be deemed to be personal property, fixtures or property other than real estate (all for the purposes of this Section 18 called "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, and the following provisions of this Section 18 shall not limit the generality or applicability of any other provision of this Mortgage but shall be in addition thereto:

- (a) The Mortgagor (being the Debtor as that term is used in the Code) is and will be the true and lawful owner of the Collateral, subject to no liens, charges or encumbrances other than the lien hereof.
- (b) The Collateral is to be used by the Mortgagor solely for business purposes, being installed upon the Premises for Mortgagor's own use or as the equipment and furnishings furnished by Mortgagor, as landlord, to tenants of the Premises.

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- (c) The Collateral will be kept at the real estate comprised in the Premises, and will not be removed therefrom without the consent of the Mortgagee (being the Secured Party as that term is used in the Code) or any other person, and the Collateral may be affixed to such real estate but will not be affixed to any other real estate.
- (d) The only persons having any interest in the Premises are the Mortgagor and the Mortgagee.
- (e) No Financing Statement covering any of the Collateral or any proceeds thereof is on file in any public office except pursuant hereto, and 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 and other documents in 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 reasonably 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 to no adverse liens or encumbrances, and the Mortgagor will pay the cost of filing the same or filing or recording such financing statements or other documents, and this instrument, in all public offices wherever filing or recording is deemed by the Mortgagee to be necessary or desirable.
- (f) Upon any default or event of Default hereunder (regardless of whether the Code has been enacted in the jurisdiction where rights or remedies are asserted) and at any time thereafter (such default not having previously been cured) the Mortgagee at its option may declare the Indebtedness Hereby Secured immediately due and payable, all as more fully set forth in Section 19 hereof, and thereupon Mortgagee shall have the remedies of a secured party under the Code, including without limitation, the right to take immediate and exclusive possession of the Collateral, or any part thereof, and for that purpose may, so far as the Mortgagor can give authority therefor, with or without judicial process, enter (if this can be done without breach of the peace), upon any place which the Collateral or any part thereof may be situated and remove the same therefrom (provided that if the Collateral is affixed to real estate, such removal shall be subject to the conditions stated in the Code); and the Mortgagee shall be entitled to hold, maintain, preserve and prepare the Collateral for sale, until disposed of, or may propose to retain the Collateral subject to Mortgagor's right of redemption in satisfaction of the Mortgagor's obligations, as provided in the Code. The Mortgagee without removal may render the Collateral unusable and dispose of the Collateral on the Premises. The Mortgagee may require the Mortgagor to assemble the Collateral and make it available to the Mortgagee for its possession at a place to be designated by Mortgagee which is reasonably convenient to both parties. The Mortgagee will give Mortgagor at least five (5) days' notice of the time and place of any public sale thereof or of the time after which any private sale or any other intended disposition thereof is made. The requirements of reasonable notice shall be met if such notice is mailed, by certified mail or equivalent, postage prepaid, to the address of Mortgagor shown in Section 34 of this Mortgage at least five (5) days before the time of the sale or disposition. The Mortgagee may buy at any public sale and if the Collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations, Mortgagee may buy at private sale. Any such sale may be held as part of and in conjunction with any foreclosure sale of the real estate comprised within the Premises, the Collateral and real estate to be sold as one lot if Mortgagee so elects. The net proceeds realized upon any such disposition, after deduction for the expenses of retaking, holding, preparing for sale, selling or the like and the reasonable attorneys' fees and legal expenses incurred by Mortgagee, shall be applied in satisfaction of the Indebtedness Hereby Secured. The Mortgagee will account to the Mortgagor for any surplus realized on such disposition.
- (g) The remedies of the Mortgagee hereunder are cumulative and the exercise of any one or more of the remedies provided for herein or under the Code shall not be construed as a waiver of any of the other remedies of the Mortgagee, including having the Collateral deemed part of the realty upon any foreclosure thereof so long as any part of the Indebtedness Hereby Secured remains unsatisfied.
- (h) The terms and provisions contained in this Section 18 shall, unless the context otherwise requires, have the meanings and be construed as provided in the Code.
19. **Events of Default.** If one or more of the following events (herein called "Events of Default") shall occur:
- (a) If default be made for seven (7) days in the due and punctual payment of the Note or any installment thereof, either principal or interest, as and when the same is due and payable, or if default be made for seven (7) days in the making of any payment of monies required to be made hereunder or under the Note; or
- (b) If an Event of Default pursuant to Section 17 hereof shall occur and be continuing, without notice or period of grace of any kind; or
- (c) If default be made in the due and punctual delivery to the Mortgagee of the financial statements required pursuant to Section 16 hereof, without notice or period of grace of any kind; or
- (d) If:
- (i) Mortgagor shall file a petition in voluntary bankruptcy under any chapter of the Federal Bankruptcy Act or any similar law, state or federal, now or hereafter in effect, or
- (ii) the Mortgagor shall file an answer admitting insolvency or inability to pay its debts, or
- (iii) within sixty (60) days after the filing against Mortgagor of any involuntary proceedings under such Bankruptcy Act or similar law, such proceedings shall not have been vacated or stayed, or
- (iv) The Mortgagor shall be adjudicated a bankrupt, or a trustee or receiver shall be appointed for the Mortgagor or for all or the major part of the Mortgagor's property or the Premises, in any involuntary proceeding, or any court shall have taken jurisdiction of all or the major part of the Mortgagor's property or the Premises in any involuntary proceeding for the reorganization, dissolution, liquidation or winding up of the Mortgagor, and such trustee or receiver shall not be discharged or such jurisdiction relinquished or vacated or stayed on appeal or otherwise stayed within sixty (60) days, or
- (v) The Mortgagor shall make an assignment for the benefit of creditors or shall admit in writing its inability to pay its debts generally as they become due or shall consent to the appointment of a receiver or trustee or liquidator of all or the major part of its property, or the Premises, or
- (e) If any default shall exist under the provisions of Section 25 hereof ~~or under the Assignment referred to in said Section~~, or
- (f) If default shall continue for fifteen (15) days after notice thereof by the Mortgagee to the Mortgagor in the due and punctual performance or observance of any other agreement or condition herein or in the Note contained, or
- (g) If the Premises shall be abandoned,

then the Mortgagee is hereby authorized and empowered, at its option, and without affecting the lien hereby created or the priority of said lien or any right of the Mortgagee hereunder, to declare, without further notice all Indebtedness Hereby Secured to be immediately due and payable, whether or not such default be thereafter remedied by the Mortgagor, and the Mortgagee may immediately proceed to foreclose this Mortgage and/or to exercise any right, power or remedy provided by this Mortgage and the Note, by the Assignment or by law or in equity conferred.

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

21. **Proceeds of Foreclosure Sale.** The proceeds of any foreclosure sale of the Premises shall be distributed and applied in the following order of priority: First, on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in Section 20 hereof. Second, all other items which, under the terms hereof, constitute Indebtedness Hereby Secured additional to that evidenced by the Note, with interest on such items as herein provided. Third, to interest remaining unpaid upon the Note. Fourth, to the principal remaining unpaid upon the Note, and lastly, any surplus to the Mortgagor, and its successors or assigns, as their rights may appear.

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

- (a) The Indebtedness Hereby Secured or the indebtedness secured by any decree foreclosing this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to the foreclosure sale; or
- (b) The deficiency in case of a sale and deficiency.

23. **Insurance Upon Foreclosure.** In case of an insured loss after foreclosure proceedings have been instituted, the proceeds of any insurance policy or policies, if not applied in rebuilding or restoring the buildings or improvements, as aforesaid, shall be used to pay the amount due in accordance with any decree of foreclosure that may be entered in any such proceedings, and the balance, if any, shall be paid as the court may direct. In the case of foreclosure of this Mortgage, the court, in its decree, may provide that the Mortgagee's clause attached to each of the casualty insurance policies may be canceled and that the decree creditor may cause a new loss clause to be attached to each of said casualty insurance policies making the loss thereunder payable to said decree creditors; and any such foreclosure decree may further provide that in case of one or more redemptions under said decree, pursuant to the statutes in such case made or provided, then in every such case, each and every successive redeemer may cause the preceding loss clause attached to each casualty insurance policy to be canceled and a new loss clause to be attached thereto, making the loss thereunder payable to such redeemer. In the event of foreclosure sale, the Mortgagee is hereby authorized, without the consent of the Mortgagor, to assign any and all insurance policies to the purchaser at the sale, or to take such other steps as the Mortgagee may deem advisable to cause the interest of such purchaser to be protected by any of the said insurance policies.

24. **Waiver.** 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 or from any law now or hereafter in force providing for the valuation or appraisal of the Premises, or any part thereof, prior to any sale or sales thereof to be made pursuant to any provisions herein contained, or to decree, judgment or order of any court of competent jurisdiction; or after such sale or sales claim or exercise any rights under any statute now or hereafter in force to redeem the property so sold, or any part thereof, or relating to the marshalling thereof, upon foreclosure sale or other enforcement hereof. The Mortgagor hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage, on its own behalf and on behalf of each and every person, excepting only decree or judgment creditors of the Mortgagor acquiring any interest 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 full extent permitted by the laws of the State of Illinois, if applicable. The Mortgagor will not invoke or utilize any such law or laws or otherwise hinder, delay or impede the execution of any right, power or remedy herein or otherwise granted or delegated to the Mortgagee, but will suffer and permit the execution of every such right, power and remedy as though no such law or laws have been made or enacted.

25. **Assignment.** As further security for the Indebtedness Hereby Secured, the Mortgagor has executed and delivered to the Mortgagee a separate instrument, herein called the "Assignment," dated as of the date hereof, which instrument and whereby, among other things, the Mortgagee has assigned to the Mortgagee all of the rents, issues and profits and/or any and all leases and/or the rights of management of the Premises, all as therein more specifically set forth, which said Assignment is hereby incorporated herein by reference as fully and with the same effect as if set forth herein at length. The Mortgagor agrees that it will duly perform and observe all of the terms and provisions on its part to be performed and observed under the Assignment. The Mortgagor further agrees that it will duly perform and observe all of the terms and provisions on lessor's part to be performed and observed under any and all leases of the Premises to the end that no default on the part of lessor shall exist thereunder. Nothing herein contained shall be deemed to obligate the Mortgagee to perform or discharge any obligation, duty or liability of lessor under any lease of the Premises, and the Mortgagor shall and does hereby indemnify and hold the Mortgagee harmless from any and all liability, loss or damage which the Mortgagee may or might incur under any lease of the Premises or by reason of the Assignment; and any and all such liability, loss or damage incurred by the Mortgagee, together with the costs and expenses, including reasonable attorneys' fees, incurred by the Mortgagee in the defense of any claims or demands therefor (whether successful or not), shall be so much additional Indebtedness Hereby Secured, and the Mortgagor shall reimburse the Mortgagee therefor on demand, together with interest at the Default Rate from the date of demand to the date of payment.

26. **Mortgagee in Possession.** Nothing herein contained shall be construed as constituting the Mortgagee a mortgagee in possession in the absence of the actual taking of possession of the Premises by the Mortgagee.

27. **Business Loan.** It is understood and agreed that the loan evidenced by the Note and secured hereby is a business loan within the purview of the laws of the State of Illinois, if applicable, contracted solely for the purpose of carrying on or acquiring the business of the Mortgagor as contemplated by said Section.

\*and the Mortgagor hereby consents to the appointment of any such Receiver and the Mortgagee's management of the Premises as a Mortgagee in Possession.



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28. Title in Mortgagor's Successors. In the event that the ownership of the Premises becomes vested in a person or persons other than the Mortgagor, the Mortgagee may, without notice to the Mortgagor, deal with such successor 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. The Mortgagor will give immediate written notice to the Mortgagee of any conveyance, transfer or change of ownership of the Premises, but nothing in this Section 28 contained shall vary or negate the provisions of Section 17 hereof.

29. Rights Cumulative. Each right, power and remedy herein conferred upon the Mortgagee, is cumulative and in addition to every other right, power or remedy, express or implied, given now or hereafter existing, at law or in equity, and each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by the Mortgagee, and the exercise or the beginning of the exercise of one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy; and no delay or omission of the Mortgagee in the exercise of any right, power or remedy accruing hereunder or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any default or acquiescence therein.

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

31. Provisions Severable. The unenforceability or invalidity of any provision or provisions hereof shall not render any other provision or provisions herein contained unenforceable or invalid.

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

33. Captions and Pronsuna. 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.

34. Addresses and Notices. Any notice which any party hereto may desire or may be required to give to any other party shall be in writing, and the mailing thereof by certified mail to the following addresses, or to such other place as any party hereto may by notice in writing designate, shall constitute service of notice hereunder:

(a) If to the Mortgagee:

Joseph Isenbergh  
c/o 1111 East 60th Street  
Chicago, Illinois 60637

(b) If to the Mortgagor:

Eric C. Johnstone  
5420 South Kimbark  
Chicago, Illinois 60615

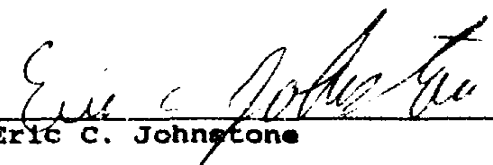
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35. Riders. The provisions contained in any rider attached hereto are and for all purposes shall be deemed to be part and parcel of this Mortgage.

~~36. The Mortgage is executed by \_\_\_\_\_, not personally but as Trustee aforesaid, in the exercise of the power and authority conferred upon and fixed in it as such Trustee, and it is expressly understood and agreed that nothing herein contained shall be constituted as creating any liability on said \_\_\_\_\_~~

~~\_\_\_\_\_ as Trustee as aforesaid, or on said \_\_\_\_\_, personally, to pay the said Note or any interest that may accrue thereon, or any indebtedness accruing hereunder, or to perform any covenant either express or implied herein contained, all such liability, if any, being expressly waived by the Mortgagee and by every person now or hereafter claiming any right or security hereunder, and that so far as \_\_\_\_\_~~

~~\_\_\_\_\_ as Trustee as aforesaid, and its successors, and \_\_\_\_\_ personally, are concerned, the Mortgagee and the holder or holders of the Note and the owner or owners of the indebtedness accruing hereunder shall look solely to the Premises hereby conveyed for the payment thereof, by the enforcement of the lien hereby created, in the manner herein and in the Note provided, or by action to enforce the personal liability of any guarantor or co-mortgagor.~~

  
Eric C. Johnstone

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## EXHIBIT A

THE SOUTH 1/2 OF LOT 25 IN BLOCK 29 IN KIMBARK'S ADDITION TO HYDE PARK IN SECTION 11, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Commonly known as: 5420 South Kimbark, Chicago, Illinois

PIN: 20-11-420-026

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