

UNOFFICIAL COPY

7:41 S S



NOW, THEREFORE, TO SECURE TO MORTGAGEE (a) the repayment of the indebtedness evidenced by the Note with interest thereon, and all renewals, extensions and modifications thereof; (b) the payment of all other sums, with interest, advanced in accordance herewith to protect the security of this Mortgage; and (c) the performance of the covenants and agreements of the Mortgagor herein contained, the Mortgagor does hereby MORTGAGE, GRANT AND CONVEY to the Mortgagee the property described on Exhibit A attached hereto, located in the City of Chicago, Cook County, Illinois, hereby releasing and waiving all rights under and by virtue of the Homestead Exemption Laws of the State of Illinois, which, with the property hereinafter described, is referred to as the "premises",

WHEREAS, the Beneficiaries who are officers, shareholders and/or directors of the Borrower and who acknowledge a substantial interest in the making of the Loan and a substantial economic benefit therefrom, have directed the Mortgagor to execute the within Mortgage as security for the Note.

WHEREAS, to evidence the Loan, the Borrower has executed its Construction Loan Note of even date herewith (the "Note") payable to the order of the Mortgagee in the principal amount of one Million Six Hundred Thousand and 00/100 Dollars (\$1,600,000.00); and

WHEREAS, pursuant to the terms of the Loan Agreement, the Mortgagee has agreed to provide the Borrower with construction loan financing (the "Loan"), for the purpose of renovating an existing structure at 1034 W. Barry, Chicago, Illinois into ten deluxe condominium units; and

WHEREAS, the Mortgagor and its beneficiaries, Cary Kerbel, Joseph Reina, Laurie Reina and Tony Cascino (the "Beneficiaries"), Barrymore Corp., d/b/a Westbary Place, an Illinois corporation (the "Borrower"), and Oxford Bank and Trust (the "Mortgagee"), have entered into a Construction Loan Agreement ("Loan Agreement") of even date herewith; and

WITNESSETH:

"Mortgagor").  
as Trust Number 114735-01 (hereinafter referred to as the Trustee under a Trust Agreement dated October 30, 1991 and known 1992 by American National Bank and Trust company of Chicago as THIS MORTGAGE is executed as of this 10th day of November,

92837837

CONSTRUCTION LOAN MORTGAGE

DEPT-01 RECORDING \$55.50  
141111 TRAN 0119 11/10/92 16:10:00  
#7569 \* -92-837837  
COOK COUNTY RECORDER

418-8-8-86

TOGETHER with all buildings and improvements now or hereafter constructed upon said premises or any part thereof, all heretofore or hereafter vacated alleys and streets abutting said premises, and all fixtures and equipment located thereon or installed hereafter, said fixtures and equipment being pledged primarily and on a parity with said premises and which shall be deemed to be part of the premises to the extent they are permanently affixed thereto;

TOGETHER with all rents, issues, profits and leases thereof for so long and during all such times as Mortgagee, its successors and assigns may be entitled thereto, and all tenements, hereditaments, easements and appurtenances affecting the premises.

TO HAVE AND TO HOLD the premises unto the Mortgagee, its successors and assigns, forever, for the purposes and uses set forth herein.

MORTGAGOR DOES HEREBY COVENANT AND AGREE AS FOLLOWS:

FIRST: Payment of Principal and Interest: Mortgagee shall cause the Borrower to pay the principal, interest, and all other sums due under the Note in accordance with the terms and provisions thereof and shall pay when due all other amounts provided for herein.

SECOND: Obligatory Advances: The Loan by Mortgagee to the Borrower as evidenced by the Note will be disbursed in a series of advances made over a period of time until maturity on April 30, 1994. Provided that the Borrower and Beneficiaries comply with all the terms and provisions of the Loan Agreement, then upon request the Mortgagee is obligated to make advances to the Borrower up to the total principal sum of \$1,600,000.00. Pursuant to the provisions of 111, Rev. Stat. Ch. 30, § 37a, each disbursement of Loan proceeds by the Mortgagee shall, for purposes of the priority of the lien of this mortgage, relate back to the date of recordation hereof.

THIRD: Preservation and Maintenance of Property: Mortgagee will abstain from and will not permit the commission of waste on the premises and will keep the buildings, improvements, fixtures and equipment now or hereafter thereon in good repair and will make replacements thereto as and when the same become necessary. Mortgagee shall promptly notify Mortgagee in writing of the occurrence of any loss or damage to the premises. Mortgagee shall not materially alter the buildings, improvements, fixtures or equipment now or hereafter upon said premises, or remove the same therefrom, or permit any tenants or other person to do so, without the prior written consent of the Mortgagee. Mortgagee will not permit any portion of the premises to be used for any unlawful purposes. Mortgagee covenant and agree that in the

Arthur J. Gub

# UNOFFICIAL COPY

ownership, operation and management of the premises Mortgagor will observe and comply with all applicable federal, state and local statutes, ordinances, regulations, orders and restrictions, including, without limitation, all zoning, building code, and environmental protection ordinances, regulations, orders and restrictions.

**FOURTH: Hazard Insurance:** Mortgagor shall keep all the premises insured as required by Section 5.4(a)(viii) of the Loan Agreement, the terms of which section are incorporated by reference herein. In the event of loss or damage, the Mortgagee shall, after deducting the costs of collection thereof, if any, make the insurance proceeds available to the Mortgagor for repair and restoration, provided: (a) the proceeds are deposited with the Mortgagee; (b) there is no default under the terms of the Note, Mortgage, or any document evidencing or securing the Note which has not been cured within the applicable grace period; (c) the insurance carrier does not deny liability to a named insured; (d) the Mortgagee shall be furnished with an estimate of the costs of restoration accompanied by an architect's certification as to such costs and appropriate plans and specifications; (e) if the estimated costs of reconstruction shall exceed the proceeds available, Mortgagor shall furnish a bond of completion or such other evidence reasonably satisfactory to the Mortgagee of the Mortgagor's ability to meet such excess costs; (f) disbursement of the proceeds during the reconstruction shall be, in the bank's discretion, through an escrow at a title company of the Bank's choice, or upon an architect's certification as to the cost of the work done and evidence that there are no liens arising upon the reconstruction. No payment made prior to the final completion of work shall exceed ninety percent (90%) of the value of the work performed from time to time and at all times the undisbursed balance of the said proceeds remaining in the hands of Mortgagee shall be at least sufficient to pay for the costs of completion of the work free and clear of liens; (g) final payment shall be upon an architect's certificate and certification by one of the Mortgagee's appraisers as to completion in accordance with plans and specifications. The building and improvements so restored or rebuilt are to be of at least equal value and of substantially the same character as prior to the damage or destruction. In all other cases the proceeds of the loss under any policy shall be paid over to the Mortgagee and shall be applied toward the payment of all amounts payable by Mortgagor to Mortgagee, whether or not then due and payable.

**FIFTH: Charges, Liens:** Mortgagor shall pay when due all taxes and assessments that may be levied on said premises, and shall promptly deliver to Mortgagee receipts showing payment thereof. Mortgagor shall pay when due all taxes and assessments that may be levied upon or on account of this Mortgage or the indebtedness secured hereby or upon the interest or estate in

# UNOFFICIAL COPY

9 2 3 3 7 3 0 7

said premises created or represented by this Mortgage whether levied against Mortgagor or otherwise.

**SIXTH: Protection of Mortgagee's Security:** If default be made by the Mortgagor in the payment of any of the taxes or assessments to be levied against the premises or in procuring and maintaining insurance required herein and paying the premiums therefor, in keeping the premises in a proper state of maintenance and repair, or in performing any other covenant of Mortgagor herein, Mortgagee may at its option and without any obligation on its part so to do, pay said taxes and assessments, make such repairs and perform such maintenance, effect such insurance, pay such premiums, and perform any other covenant of Mortgagor herein. All reasonable amounts expended by Mortgagee hereunder shall be secured hereby and shall be due and payable by Mortgagor to Mortgagee forthwith on demand, with interest thereon at the default rate applicable under the Note from the date of expenditure.

**SEVENTH: Reimbursement For Mortgagee Legal Expense:** Should Mortgagee incur any cost or expense, including attorneys' fees, in enforcing its rights hereunder or in protecting the premises, whether or not any legal action is filed, or in the event that Mortgagee is made a party to any suit or proceeding by reason of the interest of Mortgagee in the premises, or if Mortgagee institutes proceedings to foreclose the mortgage granted hereunder, Mortgagor shall reimburse Mortgagee for all reasonable costs and expenses, including reasonable attorneys' fees, incurred by Mortgagee in connection therewith. All amounts incurred by Mortgagee hereunder shall be secured hereby and shall be due and payable by Mortgagor to Mortgagee forthwith on demand, with interest thereon at the default rate under the Note from the date of expenditure.

**EIGHTH: Acceleration:** Should a default occur as specified in paragraph Eighteenth herein or in the Note, or in any other instrument given to secure or further evidence the Note, or in the event judicial proceedings are instituted to foreclose a lien upon the mortgaged premises or any part thereof, Mortgagee may at any time after such default, and without notice, declare the principal balance of the indebtedness secured hereby, together with interest thereon, to be due and payable immediately. The commencement of proceedings to foreclose this Mortgage shall, in any event, be deemed such declaration. In addition to any other right or remedy which Mortgagee may now or hereafter have by law, the Mortgagee shall have the right and power (a) to foreclose this Mortgage by legal action, as provided by Illinois Statute and the rule of practice relating thereto; and (b) to enter upon and take possession of said premises with the irrevocable consent of Mortgagor as given and evidenced by its execution of this instrument, and as Mortgagee in possession, let said premises, and receive all the rents, issues and profits thereof, which are

92337307



# UNOFFICIAL COPY

overdue, due or to become due, and to apply the same, after the payment of all reasonable charges and expenses deemed by Mortgagee to be necessary, on account of the indebtedness secured hereby, Mortgagor for itself and any subsequent owner of said premises hereby agreeing to pay to Mortgagee in advance a reasonable rent for the premises occupied by it, and in default of so doing hereby agrees that it may be dispossessed by the usual legal proceedings available against any defaulting tenant of real estate and further agreeing to permit any action to be brought in its name to dispossess any tenant defaulting in the payment of rent to Mortgagee or violating the terms of its occupancy, which right and power are effective and may be enforced either with or without any action to foreclose this Mortgage.

**NINTH. Application of Proceeds of Foreclosure:** Upon a foreclosure sale of said premises or any part thereof, the proceeds of such sale shall be applied in the following order:

(a) To the payment of all costs of the suit of foreclosure, including reasonable attorneys' fees and the costs of title searches and abstracts;

(b) To the payment of all other expenses of Mortgagee incurred in connection with the foreclosure, including all money expended by Mortgagee and all other amounts payable by Mortgagor to Mortgagee hereunder, with interest thereon at the default rate under the Note; and

(c) To the payment of the principal and interest of the indebtedness secured hereby.

**TENTH: Waiver of Homestead; Waiver of Redemption:** Mortgagor waives and releases all rights and benefits under and by virtue of the Homestead Exemption Laws of the State of Illinois and all other exemption laws, moratorium laws or other laws limiting the enforcement hereof. Mortgagor WAIVES ANY AND ALL RIGHTS OF REDEMPTION UNDER ANY JUDGMENT OF FORECLOSURE OF THIS MORTGAGE, AND ANY REDEMPTION RIGHTS GRANTED BY THE "ILLINOIS MORTGAGE FORECLOSURE LAW" ("IMFL"), ON BEHALF OF MORTGAGOR, THE TRUST ESTATE AND ALL PERSONS BENEFICIALLY INTERESTED THEREIN AND EACH AND EVERY PERSON ACQUIRING ANY INTEREST IN OR TITLE TO THE MORTGAGED PREMISES AS OF OR SUBSEQUENT TO THE DATE OF THIS MORTGAGE. Further, Mortgagor hereby waives the benefit of all appraisement, valuation, stay or extension laws, and any reinstatement rights (e.g., as under Section 15-1602 of the IMFL), now or hereafter in force, and all rights of marshalling in the event of any sale hereunder of the Mortgaged Premises or any part thereof or any interest therein.

**ELEVENTH: Receiver, Mortgagee in Possession:** Upon or at any time after the filing of any bill, complaint or petition to

621.846.856

# UNOFFICIAL COPY

9 2 0 3 7 1 3 7

foreclose this Mortgage, the court may, upon application of Mortgagee, place the Mortgagee in possession or appoint a receiver of the mortgaged premises. Such appointment may be made either before or after the sale, without notice, and without regard to the solvency or insolvency, at the time of application for appointment, of the person or persons, if any, liable for the payment of the indebtedness secured hereby and without regard to the then value of the mortgaged premises or whether the same shall be then occupied as a homestead or not, and without bond being required of the applicant. Such receiver or mortgagee in possession to the extent permitted by law shall have the power to take possession, control, and care of said premises, and to collect the rent, issues and profits of said premises during the pendency of such foreclosure, and, in case of a sale and deficiency, during the full statutory period of redemption, if any, whether there be a redemption or not, as well as during any further times when Mortgagor, their heirs, personal representatives and assigns, except for the intervention of such mortgagee in possession or receiver, would be entitled to collect 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 from time to time may authorize the receiver to apply the net income in his hands in payment in whole or in part of: (a) the costs of management of the property and collection of rents, including but not limited to the fees of the receiver or mortgagee in possession, premiums for receiver's bonds and reasonable attorneys' fees; (b) the indebtedness secured hereby or of any judgment foreclosing this Mortgage or any tax, special assessment, or other lien which may be or become superior to the lien hereof, or of such judgment, provided such application is made prior to foreclosure sale; and (c) the deficiency in case of sale and deficiency. Any such proceeding shall in no manner prevent or retard the collection of said indebtedness by foreclosure or otherwise.

TWELFTH: Condemnation: Any and all awards hereafter made or to be made to the present and all subsequent owners of the premises, by any governmental or other lawful authority for taking, by condemnation or eminent domain, the whole or any part of the premises or any improvement located thereon or any easement therein or appurtenant thereto (including any award from the United States Government at any time after the allowance of the claim therefor, the ascertainment of the amount thereof and the issuance of the warrant for payment thereof), are hereby assigned by Mortgagor to Mortgagee, which award Mortgagee is hereby authorized to collect and receive from the condemnation authorities, and Mortgagee is hereby authorized to give appropriate receipts and acquittance therefor. Mortgagor covenants and agrees that Mortgagor will give Mortgagee immediate notice of the actual or threatened commencement of any such proceedings under condemnation or eminent domain, affecting all

# UNOFFICIAL COPY

7 2 3 3 7 1 0 7

or any part of the said premises or any easement therein or appurtenant thereto, including severance and consequential damage and change in grade of streets and will deliver to Mortgagee copies of any and all papers served in connection with any such proceedings. Mortgagor further covenants and agrees to make, execute, and deliver to Mortgagee, at any time or times upon request, free, clear and discharged of any encumbrances of any kind whatsoever, any and all further assignments and/or instruments deemed necessary by Mortgagee for the purpose of validly and sufficiently assigning all awards and other compensation heretofore and hereafter to be made to Mortgagor for any taking, either permanent or temporary, under any such proceeding. Mortgagee shall make available the proceeds of any award received in connection with and in compensation for any such damage or taking for the purpose of rebuilding and restoring so much of the improvements within the premises affected thereby, subject to the following conditions; (a) that Mortgagor are not then in default under any of the terms, covenants and conditions hereof, under the Note or under any of the documents given to secure or evidence the Note; (b) that all then existing leases affected in any way by such damage or taking shall continue in full force and effect without reduction or abatement of rental (except during the period of untenability); (c) that Mortgagee shall first be given satisfactory proof that such improvements have been fully restored or that by the expenditure of such money will be fully restored, free and clear of all liens, except as to the lien of this Mortgage; (d) that in the event such award shall be insufficient to restore or rebuild the said improvements, Mortgagor shall deposit promptly with Mortgagee the amount of such deficiency, which, together with the award proceeds, shall be sufficient to restore and rebuild the said premises; (e) that in the event Mortgagor shall fail within a reasonable time, subject to delays beyond their control, to restore or rebuild the said improvements, Mortgagee, at its option, may restore or rebuild the said improvements for or on behalf of the Mortgagor and for such purpose may do all necessary acts including using said funds deposited by Mortgagor to be disbursed in accordance with the original terms of the Note; (f) that the excess of said award not necessary for completing such restoration shall be applied as hereinafter provided as a credit upon any portion, as selected by Mortgagee, of the indebtedness secured hereby. In the event any of the said conditions are not or cannot be satisfied, then the proceeds shall be paid over to Mortgagee and shall be applied toward the payment of all amounts payable by Mortgagor to Mortgagee, whether or not then due and payable. Under no circumstances shall Mortgagee become personally liable for the fulfillment of the terms, covenants, and conditions contained in any of the said leases of the said premises nor obligated to take any action to restore the said improvements.

UNOFFICIAL COPY

THIRTEENTH: Business Loans: Mortgagor warrants that the proceeds of the Note secured by the Mortgage will be used for the

# UNOFFICIAL COPY

0 2 3 3 7 5 5 1

purposes specified in Illinois Revised Statutes, Chapter 17, Section 6404, and that the indebtedness secured hereby constitutes a business loan which comes within the purview of said section.

**FOURTEENTH: Severability:** Nothing contained herein or in the Note nor any transaction related thereto, shall be construed or shall so operate either presently or prospectively, (a) to require Mortgagor to pay interest at a rate greater than is now lawful in such case to contract for, but shall require payment of interest only to the extent of such lawful rate, or (b) to require Mortgagee to make any payment or do any act contrary to law, and if any clause or provision herein contained shall otherwise so operate to invalidate this Mortgage, in whole or in part, then such clauses and provisions only shall be held for naught as though not herein contained and the remainder of this Mortgage shall remain operative and in full force and effect, and Mortgagee shall be given a reasonable time to correct any error.

**FIFTEENTH: Partial Releases:** Mortgagee shall furnish Mortgagor with a partial release of this Mortgage fully releasing the lien created hereunder with respect to those condominium units being constructed upon the mortgaged premises which are sold to third parties pursuant to the terms and conditions set forth in Article VI of the Loan Agreement, which Article is incorporated by reference herein, PROVIDED, that all of the following conditions precedent must first be satisfied:

a) there has been no uncured default hereunder, under the Note, the Loan Agreement or any of the Loan Documents defined therein, and

b) the Mortgagee is paid the greater of: (i) the net proceeds from the sale of each condominium unit on the premises (gross sales proceeds less broker's commissions and customary closing costs), or (ii) the minimum sales price for such unit as set forth on Exhibit B attached hereto.

**SIXTEENTH: Environmental Warranty:**

(a) The Mortgagor hereby represents and warrants to the Mortgagee that neither the Mortgagor, Borrower, the Beneficiaries, nor, to the best of the Mortgagor's knowledge after commercially reasonable investigation, any other person or entity, has ever caused or permitted any Hazardous Material to be placed, held, located or disposed of on, under or at the premises or any part thereof, and that the premises has never been used by the Mortgagor, Borrower, the Beneficiaries, or, to the best of the Mortgagor's knowledge after commercially reasonable investigation, by any other person or entity, as a temporary or permanent dump or storage site for any Hazardous Material.



# UNOFFICIAL COPY

Mortgagor hereby represents to the Mortgagee that neither the Mortgagor, Borrower, nor the Beneficiaries will or will permit any other person or entity to cause or permit any Hazardous Material to be placed, held, located or disposed of on, under or at the premises or any part thereof. "Hazardous Material" means any hazardous, toxic, or dangerous waste, substance or material defined as such in (or for the purposes of) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, any so-called "Superfund" or "Superlien" law, and shall include, but shall not be limited to, any substances, materials or wastes that are regulated by any local governmental authority, the state where the premises is located, or the United States of America because of toxic, flammable, explosive, corrosive, reactive, radioactive or other properties that may be hazardous to human health or environment, including petroleum products, asbestos and including any material or substances that are listed in the United States Department of Transportation Hazardous Material Table, as amended, 49 C.F.R. 172.101, or in the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. subsections 9601 et seq., or the Resources Conservation and Recovery Act, as amended, 42 U.S.C. subsections 6901, et seq., or any other applicable governmental law or regulation imposing liability or standards of conduct concerning any hazardous, toxic or dangerous substances, waste or material, as now or at any time hereafter in effect.

(b) The representations, warranties and indemnity made in this paragraph SIXTEENTH shall survive: (i) the sale, transfer, or conveyance of all or any part of the premises or the beneficial interest under the Trust Agreement by which the Mortgagor was created; (ii) the foreclosure of any liens on the premises by the Mortgagee or any third party or the conveyance thereof by deed in lieu of foreclosure; (iii) the repayment of the Note; and (iv) all other indicia of the termination of the relationship between the Mortgagor and Mortgagee, the Borrower or the Beneficiaries.

SEVENTEENTH: Warrant and Defense of Title: At the time of the execution and delivery of this instrument, Mortgagor is truly seized of the premises in fee simple, free of all liens and encumbrances whatsoever, except for Permitted Encumbrances as defined in the Loan Agreement and any encumbrances in favor of the Mortgagee. Mortgagor will forever warrant and defend the same against any and all claims whatever, and the lien created hereby is and will be kept a first lien upon said premises and every part thereof. Mortgagor shall pay when due all water charges, sewer service charges and all other amounts which might become a lien upon the premises prior to this Mortgage and shall, upon written request, furnish to Mortgagee duplicate receipts therefor.

# UNOFFICIAL COPY

**EIGHTEENTH: Default:** (a) The occurrence of any of the following events or conditions shall constitute a default hereunder ("Event of Default"):

(i) the Borrower fails to pay the principal sum secured hereby, any installment thereof, interest thereon, or any installment thereof, as they severally become due;

(ii) the Mortgagor fails to perform or observe any term, covenant, or condition in this Mortgage;

(iii) an event of default occurs under the Loan Agreement, under any of the Loan Documents, or under the Note itself;

(iv) a petition under the Federal Bankruptcy Reform Act of 1978, as amended, or any similar law, state or federal, whether now or hereafter existing, is filed by or against the Mortgagor Borrower, or any of the Beneficiaries which is not dismissed within thirty (30) days thereafter;

(v) the Mortgagor, Borrower, or any of the Beneficiaries are unable to pay their respective debts as they become due;

(vi) a trustee or a receiver is appointed for all or any portion of the premises or for the Mortgagor, Borrower, or any of the Beneficiaries for a substantial portion of their respective assets, and such trustee or receiver is not discharged within thirty (30) days thereafter;

(vii) the Mortgagor, Borrower, or any of the Beneficiaries makes an assignment for the benefit of creditors;

(viii) any financial statement of any type, previously submitted to the Mortgagee in connection with its agreement to make the aforesaid loan or submitted thereafter, is materially false, incorrect, or incomplete;

(ix) the Mortgagor, Borrower, or any of the Beneficiaries suffers final judgments for payment of money aggregating in excess of ten percent of the total balance due the Mortgagee under the Note;

(x) a judgment creditor of the Mortgagor, Borrower, or any of the Beneficiaries obtains a lien on or possession of any part of said parties' assets or of the premises by any means, which is not discharged or released within sixty (60) days thereafter;

(xi) a notice of lien, levy or assessment is delivered to Borrower, Mortgagor or any of the Beneficiaries or is filed of record, with respect to the premises or any part of said parties' assets, by the United States or any department, instrumentality or agency thereof, or by any state, county, municipal or other

# UNOFFICIAL COPY

7 2 3 3 7 3 3 7

governmental agency, including without limitation the Pension Benefit Guaranty Corporation;

(xii) there occurs any material uninsured damage or destruction to the premises, any improvements being constructed on the premises or any personal property located thereon;

(xiii) the Borrower or any of the Beneficiaries cease their respective business operations or sell or otherwise transfer all or substantially all of their respective assets;

(xiv) the guaranty of any guarantor of the Note at any time after its execution and delivery ceases to be in full force and effect or is declared null and void for any reason; and

(xv) the Mortgagee deems itself to be reasonably insecure, which shall mean a good faith belief that the prospect for timely repayment of the Note has been impaired.

(b) Upon the occurrence of an Event of Default, the entire indebtedness secured hereby shall, at the option of the Mortgagee, without further notice to Mortgagor, Borrower or the Beneficiaries, become immediately due and payable, and, thereupon, or at any time during the existence of any such default, the Mortgagee may proceed to foreclose this Mortgage by judicial proceedings according to the statutes in such case provided, and any failure to exercise said option shall not constitute a waiver of the right to exercise the same at any other time.

(c) Mortgagee shall additionally have the right to file an action at law on the Note, and to avail itself of any other remedy provided by law and any or all rights and remedies provided by the Loan Agreement and the Loan Documents, including without limitation the right to take possession of the premises and complete the construction of the improvements thereon substantially in accordance with the plans and specifications therefor as provided in Section 8.2(e) of the Loan Agreement, the terms of which are incorporated by reference herein. All of the foregoing remedies in (b) and (c) of this paragraph Seventeenth shall be concurrent and may be pursued simultaneously.

(d) In any case in which, under the provisions of this Mortgage, the Mortgagee has a right to institute foreclosure proceedings, whether or not the entire principal sum secured hereby is declared to be immediately due as aforesaid, or whether before or after the institution of legal proceedings to foreclose the lien hereof or before or after sale thereunder, upon demand of Mortgagee, Mortgagor shall surrender to Mortgagee and Mortgagee shall be entitled to take actual possession of the premises, or any part thereof, personally or by its agents or attorneys, as for condition broken and Mortgagee in its

document

# UNOFFICIAL COPY

discretion may enter upon and take and maintain possession of all or any part of said premises, together with all documents, books, records, papers, and accounts of the Mortgagor, Beneficiaries or the then owner of the premises relating to the ownership, operation and maintenance of the premises, and may exclude the Mortgagor, Beneficiaries, any guarantors of the Note, and their agents or servants, wholly therefrom and may, as attorney in fact or agent of the Mortgagor, or in its own name as Mortgagee and under the powers herein granted: (i) hold, operate, manage, and control the premises, either personally or by its agents, and with full power to use such measures, legal or equitable, as in its discretion or in the discretion of its successors or assigns may be deemed proper or necessary to enforce the payment or security of the avails, rents, issues, and profits of the premises including actions for recovery of rent, actions in forcible detainer and actions in distress for rent, hereby granting full power and authority to exercise each and every of the rights, privileges, and powers herein granted at any and all times hereafter, without notice to the Mortgagor; (ii) cancel or terminate any lease or sublease for any cause or on any ground which would entitle Mortgagor to cancel the same; (iii) elect or disaffirm any lease or sublease made subsequent to this Mortgage or subordinated to the lien hereof; (iv) extend or modify any then existing leases and make new leases, which extensions, modifications and new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the Note and the date of issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor and all persons whose interest in the premises are subject to the lien hereof and to be binding also upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the mortgage indebtedness, satisfaction of any foreclosure judgment, or issuance of any certificate of sale or deed to any purchaser; (v) make all necessary or proper repairs, decorating, renewals, replacements, alterations, additions, betterments, and improvements to the premises as to Mortgagee may seem judicious; and (vi) insure and reinsure the premises against all risks incidental to Mortgagee's possession, operation, and management thereof and receive all avails, rents, issues, and profits therefrom.

(e) Any avails, rents, issues and profits of the premises received by the Mortgagee after having possession of the premises, or pursuant to any assignment thereof to the Mortgagee under the provisions of this Mortgage or the Assignment of Rents executed by the Mortgagor of even date herewith shall be applied in payment of or on account of the following, in such order as the Mortgagee (or in case of a receivership, as the court) may determine in its reasonable business judgment:

92-11-17



# UNOFFICIAL COPY

(i) to the payment of the operating expenses of the premises, including reasonable compensation to the Mortgagee or the receiver and its agent or agents, if management of the premises has been delegated to an agent or agents, and shall also include lease commissions and other compensation and expenses of seeking and procuring tenants and entering into leases, established claims for damages, if any, and premiums on insurance hereinabove authorized;

(ii) to the payment of taxes, special assessments, and water taxes now due or which may hereafter become due on the premises, or which may become a lien prior to the lien of this Mortgage;

(iii) to the payment of all reasonable repairs, decorating, renewals, replacements, alterations, additions, betterments, and improvements of said premises, to place said property in such condition as will, in the reasonable judgment of Mortgagee or receiver, make it readily rentable;

(iv) to the payment of any indebtedness secured hereby or any deficiency which may result from any foreclosure sale.

**NINETEENTH: Transfer of Property:** Except as provided in Article VI of the Loan Agreement and Paragraph FOURTEENTH herein, if all or any part of the premises, or the beneficial interest under the Trust Agreement by which the Mortgagor was created, is sold, transferred, conveyed, assigned or alienated by the Mortgagor or Beneficiaries or the Mortgagor or Beneficiaries shall contract to do any of the foregoing (which shall include the execution of any form of installment agreement for deed or beneficial interest), without the Mortgagee's prior written consent, Mortgagee may, at Mortgagee's option, declare all the sums secured by this Mortgage to be immediately due and payable without notice.

**TWENTIETH: Notice:** All notices, demands and requests required or permitted to be given to Mortgagor or Mortgagee hereunder or by law shall be deemed given when delivered in person or two days after deposit in the United States mail with full postage prepaid by certified or registered mail, return receipt requested, addressed as follows:

Mortgagor: at: American National Bank and  
Trust Company of Chicago  
33 North LaSalle Street  
Chicago, IL 60690  
Attention: Trust Department

copies to: Joseph Reina  
2039 N. Magnolia  
Chicago, IL 60614

# UNOFFICIAL COPY

9 2 3 3 7 1 3 7

and

Barry Collins  
Tuttle, Vedral, Collins &  
Erickson, P.C.  
700 Lee Street  
Suite 600  
DesPlaines, IL 60016

Mortgagee at: 1100 West Lake Street  
(to an Officer Addison, IL 60101  
only)

copy to: Murray L. Manus  
Richards, Ralph, Eiden,  
Eckert & O'Donnell, Chartered  
175 E. Hawthorn Parkway, #401  
Vernon Hills, IL 60061

or to such other address as the party to be served with notice may have furnished in writing to the party seeking or desiring to serve notice as a place for the service of notice.

**TWENTY-FIRST: Remedies Cumulative:** Each and every of the rights, remedies and benefits provided to Mortgagee herein shall be cumulative and shall not be exclusive of any other rights, remedies or benefits provided by the Loan Agreement and Loan Documents or of any other rights, remedies, or benefits allowed by law. Any waiver by Mortgagee of any default shall not constitute a waiver of any similar or other default.

**TWENTY-SECOND: Successors and Assigns Bound; Joint and Several Liability; Captions:** All of the covenants and conditions hereof shall run with the land and shall be binding upon and inure to the benefit of the successors and assigns of Mortgagor and Mortgagee respectively, and all persons claiming through or under them. Any reference herein to Mortgagee shall include the successors and assigns of Mortgagee. The captions and headings of the paragraphs of this Mortgage are for convenience only and are not to be used to interpret or define the provisions hereof.

**TWENTY-THIRD: Gender and Number:** All nouns, pronouns and relative terms relating to Mortgagor shall be deemed to be masculine, feminine, or neuter, singular or plural, as the context may indicate.

**TWENTY-FOURTH: Trustee Exculpation.** This Mortgage is executed by American National Bank and Trust Company of Chicago not personally but as Trustee as aforesaid in the exercise of the power and authority conferred upon and vested in it as such Trustee (and said American National Bank and Trust Company of

92337137

# UNOFFICIAL COPY

9 2 0 3 7 1 3 7

Chicago hereby warrants that it possesses full power and authority to execute this instrument), and it is expressly understood and agreed that nothing herein or in the said Note contained shall be construed as creating any liability on the said Mortgagor or on American National Bank and Trust Company of Chicago 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 Mortgagee and every person now or hereafter claiming any right or security hereunder, and that so far as the Mortgagor and its successors and American National Bank and Trust Company of Chicago are concerned, the legal holder or holders of said Note and the owner or owners of the indebtedness accruing thereunder shall look solely to any one or more of: (1) the premises hereby conveyed and the rents, issues, and profits therefrom, for the payment thereof, by the enforcement of the lien hereby created, in the manner herein and in said Note provided; (2) any other security given to secure said indebtedness; or (3) the personal liability of the guarantors, if any.

IN WITNESS WHEREOF, the undersigned has executed this Construction Loan Mortgage as of the date first written above.

ATTEST:

American National Bank and Trust Company of Chicago, not personally but solely as Trustee aforesaid

BY:

TITLE:

Gregory S. Kasprzyk  
ASSISTANT TREASURER

BY:

TITLE:

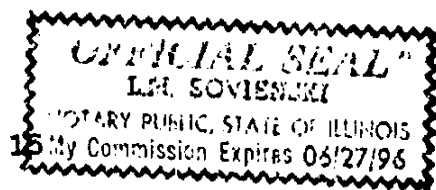
Peter Johansen  
Trustee

STATE OF ILLINOIS )  
 COUNTY OF Cook ) SS.

The foregoing instrument was acknowledged before me this NOV 10 1992 day of NOV 10 1992, 1992 by P. JOHANSEN and Gregory S. Kasprzyk of American National Bank and Trust Company of Chicago, Trustee as aforesaid, on behalf of said Trustee.

L. M. Sieniski  
 NOTARY PUBLIC

Commission Expires:



628879877

# UNOFFICIAL COPY

9 2 3 3 7 3 3 7

This mortgage was prepared by and  
after recording return to:

Murray L. Manus  
Richards, Ralph, Eiden,  
Eckert, & O'Donnell, Chartered  
175 E. Hawthorn Parkway  
Vernon Hills, Illinois 60061

92-1226.15/ajh  
11/6/92

Property of Cook County Clerk's Office

92-1226.15



# UNOFFICIAL COPY

## EXHIBIT A

### LEGAL DESCRIPTION OF PREMISES

LOTS 1, 2 AND 3 IN JOSEPH H. DYNAN'S SUBDIVISION OF LOTS 27, 28, 29 AND 30 IN GIL'S SUBDIVISION OF BLOCK 2 OF OUTLOTS 2 AND 3 OF CANAL TRUSTEE'S SUBDIVISION OF THE EAST 1/2 OF SECTION 29, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

P.I.N. 14-29-202-037

Commonly known as: 1054 N. Barry  
Chicago, IL 60614

92-1226.15/ajh  
11/6/92

6. 11. 1992

# UNOFFICIAL COPY

## EXHIBIT B

### SCHEDULE OF MINIMUM PRICES

Unit A	\$350,000
Unit B	\$250,000
Unit C	\$260,000
Unit D	\$270,000
Unit E	\$360,000
Unit F	\$350,000
Unit G	\$350,000
Unit H	\$355,000
Unit I	\$360,000
Unit J	\$375,000

92-1226.15/ajh  
11/6/92

Property of Cook County Clerk's Office

92-1226.15

# UNOFFICIAL COPY

7 2 3 3 7 1 1 7

## STATEMENT BY GRANTOR AND GRANTEE

The grantor or his agent affirms that, to the best of his knowledge, the name of the grantee shown on the deed or assignment of beneficial interest in a land trust is either a natural person, an Illinois corporation or foreign corporation authorized to do business or acquire and hold title to real estate in Illinois, a partnership authorized to do business or acquire and hold title to real estate in Illinois, or other entity recognized as a person and authorized to do business or acquire title to real estate under the laws of the State of Illinois.

Dated November 10, 1992 Signature: Joan S Reina  
Grantor or Agent

Subscribed and sworn to before me by the said Joan S Reina this 10th day of November, 1992.  
Grantor

Notary Public Nina Roberson Grantor

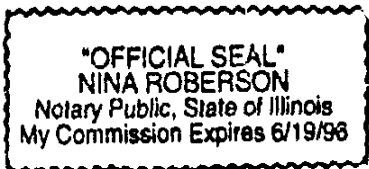
Joan S Reina  
Grantor  
Joan S Reina  
Grantor  
Anthony E. Caserio  
Grantor

The grantee or his agent affirms and verifies that the name of the grantee shown on the deed or assignment of beneficial interest in a land trust is either a natural person, an Illinois corporation or foreign corporation authorized to do business or acquire and hold title to real estate in Illinois, a partnership authorized to do business or acquire and hold title to real estate in Illinois, or other entity recognized as a person and authorized to do business or acquire and hold title to real estate under the laws of the State of Illinois.

Dated November 10, 1992 Signature: Oxford Bank and Trust  
Michael A. Rowland  
Grantee or Agent S. U. P.

Subscribed and sworn to before me by the said Michael A. Rowland this 10th day of November, 1992.

Notary Public Nina Roberson



NOTE: Any person who knowingly submits a false statement concerning the identity of a grantee shall be guilty of a Class C misdemeanor for the first offense and of a Class A misdemeanor for subsequent offenses.

[Attach to deed or ABI to be recorded in Cook County, Illinois, if exempt under provisions of Section 4 of the Illinois Real Estate Transfer Tax Act.]