

(2) 200.
73 93153

MORTGAGE

THIS INDENTURE, made October 1, 1992, by and between DEVON BANK, not personally but as Trustee under Trust Agreement dated January 8, 1988 and known as Trust No. 5440 AND DEVON BANK, not personally but as Trustee under Trust Agreement dated October 26, 1988 and known as Trust No. 5512-3 ("Borrower"), and DEVON BANK, an Illinois Banking Corporation, 6445 N. Western Avenue, Chicago, Illinois 60645, ("Lender"),
WITNESSETH

THAT WHEREAS, the Borrower hereinafter called the "Maker" is justly indebted to Lender upon a Principal Note in the aggregate principal sum of EIGHTY THOUSAND AND NO/100THS DOLLARS (\$80,000.00) evidenced by one certain Principal Note of Borrower of even date herewith, made payable to the order of DEVON BANK and delivered to the Lender in and by which Borrower promises to pay the aggregate principal sum of \$80,000.00 and interest at the rate as provided in said Note, with a final payment of the balance due on , 1997, all of said principal and interest is made payable at such place as the holder of the note may from time to time, in writing appoint, and in absence of such appointment, then at the office of the Devon Bank, 6445 North Western Avenue, Chicago, Illinois 60645.

NOW, THEREFORE, for the purpose of securing the payment of said principal sum of money and said interest on the note, of even date herewith, and the performance of the covenants and agreements herein contained, by Borrower to be performed, and in further consideration of the sum of One Dollar (\$1.00) in hand paid, the Borrower, do by these presents hereby MORTGAGE, CONVEY, AND WARRANT unto Lender, its successors an assigns, the following described real estate situated in the County of Cook and State of Illinois, to wit.:

SEE LEGAL DESCRIPTION ATTACHED AS EXHIBIT A

TOGETHER with all improvements, tenements, easements, privileges all buildings, and improvements now located thereon or which may hereafter be placed thereon, appendages, fixtures, and appurtenances thereto belonging or in any wise appertaining, and all rents, issues and profits thereof for so long and during all such times as Borrower may be entitled thereto (which are pledged primarily and on a parity with said real estate and not secondarily), and all shades, awnings, venetian blinds, screens, screen doors, storm doors and windows, gas and electric fixtures, curtain fixtures, partitions, attached floor covering, furnace pumps and all other fixtures, apparatus, and equipment including inventory equipment or articles now or hereafter therein or thereon used to supply heat, gas, air conditions, water, light, power, sprinkler protection, waste removal, refrigeration (whether single units or centrally controlled), and ventilation; 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 mentioned. All of the land, estate and property here in above described, real, personal, and mixed, whether affixed or annexed or not (except where otherwise hereinabove specified) and all rights hereby conveyed and mortgaged are intended so 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 shall for the purposes of this mortgage be deemed to be real estate and conveyed and mortgaged hereby.

TO HAVE AND TO HOLD the mortgaged premises and property unto the said Lender, its successors and assigns, forever, for the purposes and uses herein set forth, hereby releasing and waiving all rights of the Lender under and by virtue of the Homestead Exemption Laws of the State of Illinois in and to the premises hereby conveyed.

IT IS FURTHER UNDERSTOOD AND AGREED THAT:

IN CONSIDERATION of the promises and for better securing the payment of said principal sum and interest, and of all other indebtedness hereby secured, the Borrower and Maker hereby covenant and agree with the Lender, for the use of the legal holder of said note, as follows:

4/8

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

MAINTENANCE, REPAIR AND RESTORATION OF IMPROVEMENTS, PAYMENT OF PRIOR LIENS, ETC.

1. Borrower shall (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 said premises in good condition and repair, without waste, and free from mechanics' liens 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 Lender; (d) complete within a reasonable time any building or buildings now or at any time in process of erection upon said premises except as required by law or municipal ordinance, or as preapproved in writing by Lender; (g) suffer or permit no change in the general nature of the occupancy of the premises, without Lender's written consent; (h) initiate or acquiesce in no zoning reclassification, without Lender's written consent; (i) pay each item of indebtedness secured by this mortgage when due according to the terms hereof or of the note.

PAYMENT OF TAXES

2. Borrower shall pay before any penalty attaches all general taxes, and shall pay special taxes, special assessments, water charges, sewer service charges, and other charges against the premises when due, and shall, upon written request, furnish to Lender duplicate receipts therefor to prevent default hereunder; and in case of the failure of the Borrower to pay such taxes, water charges, or special assessments, then the Lender or legal holder of the Note may but not be obligated to pay such taxes, water charges or special assessments, or redeem said premises from any tax sale, or discharge or purchase any tax claims or other liens thereon, or pay-out any other sum or sums necessary for the protection, enforcement, or collection of this security, and any and all moneys paid for such purpose with interest thereon from the respective dates of payment at the rate of three percent above the then existing prime rate annually, shall become so much additional indebtedness secured hereby, and shall be included in any decree of foreclosure hereof, and shall be paid out of the rents and proceeds of sale of said premises, if not otherwise paid by the Borrower. The Borrower shall not be required to pay any tax or assessment deemed excessive or invalid so long as Borrower shall, in good faith, object to or otherwise contest the validity of same by appropriate legal proceedings which shall operate to prevent the collection of any such taxes or assessments, or the sale of any part of the property to satisfy the same, provided always that prior to the institution of any such proceedings the Borrower shall, upon demand by the Lender or any subsequent noteholder as protection and indemnity against loss or damage resulting therefrom, deposit either in cash or securities acceptable to the Lender an amount sufficient in its judgment to cover the unpaid or protested portion of any such tax or special assessment together with any costs and penalties thereon which may thereafter accrue. During the pendency of such legal proceedings neither the Lender nor any noteholder shall have a right to pay any taxes or assessment so contested unless (a) the Borrower shall fail, in the judgment of the Mortgagee or such noteholder, to prosecute such proceeding with reasonable diligence, (b) a tax receiver shall be appointed for said premises, or (c) said premises shall be advertised for sale for nonpayment of any such taxes or assessments. In any one of which events the Lender or any noteholder shall have the right to make such payment; and during the pendency of such proceedings, and upon the termination of the same and the overruling or sustaining of such objections or proceeds, in whole or in part, the Lender or any noteholder is hereby given full power and authority, without notice to the Borrower, to use and apply so much of said cash or securities as may be necessary, in its sole judgment and discretion, to pay any balance owing and unpaid upon any taxes, assessments, or water charges so contested, together with interest, penalties, and costs, and the Borrower further covenant to make such additional deposits as the Lender and any noteholder from time to time may deem necessary in order that the Lender shall at all times have on deposit a sufficient amount to protect it against any loss or damage as aforesaid.

INSURANCE

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

3. Borrower shall keep all buildings and improvements now or hereafter situated on said premises insured against loss or damage by fire and such other hazards as may reasonably be required by Lender. Borrower shall also provide liability insurance with such limits for personal injury and death and property damage as Lender may reasonably require. All policies of insurance to be furnished hereunder shall be in forms, from companies and in amounts reasonably satisfactory to Lender, with mortgage clauses attached to all policies in favor of and in form satisfactory to Lender, including a provision requiring that the coverage evidence thereby shall not be terminated or materially modified without ten (10) days prior written notice to Lender. Borrower shall deliver all policies to Lender, and, in the case of insurance about to expire, shall deliver renewal policies not less than ten (10) days prior to their respective dates of expiration.

ADJUSTMENT OF LOSSES WITH INSURER AND APPLICATION OF PROCEEDS OF INSURANCE.

4. In case of loss, Lender (or after entry of decree of foreclosure, purchaser at the sale, or the decree creditor, as the case may be) is hereby authorized either (a) to settle and adjust any claim under such insurance policies without consent of Borrower, or (b) to allow Borrower to agree with the insurance company or companies on the amount to be paid upon the loss.

In either case Lender is authorized to collect and receipt for any such insurance money. If the insurers do not deny liability as to the insureds, such proceeds, after deducting therefrom any expenses incurred in the collection thereof, shall be used to reimburse Borrower for the cost of rebuilding or restoration of buildings and improvement on said premises. In all other cases, such insurance proceeds may, at the option of Lender, either be applied in reduction of the indebtedness secured hereby, whether due or not, or be held by Lender and used to reimburse Borrower for the cost of the rebuilding or restoration of buildings or improvements on said premises. The buildings and improvements shall be so restored or rebuilt as to be of at least equal value and substantially the same character as prior to such damage or destruction. In the event Borrower is entitled to reimbursement out of insurance proceeds, such proceeds shall be made available, from time to time, upon Lender being furnished with satisfactory evidence of the estimated cost of completion thereof and with such architect's certificates, waivers of lien, contractors' sworn statements and other evidence of the estimated cost of completion thereof and with such architects certificates, waivers of lien, contractors' sworn statements and other evidence of cost and of payments as Lender may reasonably require and approve, and if the estimated cost of the work exceeds ten percent (10%) of the original principal amount of the indebtedness secured hereby, with all plans and specifications for such rebuilding or restoration as Lender may reasonably require and approve. No payment made prior to the final completion of the work shall exceed ninety percent (90%) of the value of the work performed, from time to time, and at all times the undistributed balance of said proceeds remaining in the hands of Lender shall be at least sufficient to pay for the cost of the work free and clear of liens.

In case of loss after foreclosure proceedings have been instituted, the proceeds of any such insurance policy or policies, if not applied as aforesaid in rebuilding or restoring the buildings or improvements, 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 to the owner of the equity of redemption if he shall then be entitled to the same or as the court may direct. In case of the foreclosure of this mortgage, the court in its decree may provide that the mortgagee's clause attached to each of said insurance policies may be canceled; and any such foreclosure decree may further provide, that in case of one or more redemptions under said decree, pursuant to the statute in such case made and provided, then and in every such case, each successive redeemer may cause the proceeding loss clause to be attached thereto, making the loss thereunder payable to such redeemer. In the event of foreclosure sale, Lender is hereby authorized, without the consent of Borrower, to assign any and all insurance policies to the purchaser at the sale, or to take such other steps as Lender may deem advisable, to cause the interest of such purchaser to be protected by any of the said insurance policies.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

STAMP TAX

5. If, by the laws of the United States of America, or of any state having jurisdiction over Borrower, any tax is due or becomes due in respect of the issuance of the note hereby secured, Borrower covenant and agree to pay such tax in the manner required by any such law. Borrower further covenant to hold harmless and agree to pay such tax in the manner required by any such law. Borrower further covenant to hold harmless and agree to indemnify Lender, its successor or assigns, against any liability incurred by reason of the imposition of any tax on the issuance of the note secured hereby.

FUTURE ADVANCE

6. This Mortgage shall secure future advances, if any, made by Lender under any subsequent agreement unless otherwise provided herein. All such advances made shall be secured hereby and shall have and be entitled to the same lien priority as that indebtedness first extended to Borrower by Lender under the Principal Note. All future advances shall be made under the terms of the note or new notes and in no event shall be made after twenty years from the date hereof.

PREPAYMENT PRIVILEGE

7. At such time as Borrower are not in default either under the terms of the note secured hereby or under the terms of this mortgage, Borrower shall have the privilege of making prepayments on the principal of said note (in addition to the required payments) in accordance with the terms and conditions, if any, set forth in said note.

OBSERVANCE OF LEASE ASSIGNMENT

8. In the event Borrower, as additional security for the payment of the indebtedness described in and secured hereby, has sold, transferred and assigned, or may hereafter sell, transfer and assign, to Lender, its successors and assigns, any interest of mortgagor as lessor in any lease or leases, Borrower expressly covenant and agree that if Borrower, as lessor under such lease or leases assigned, shall fail to perform and fulfill any term, covenant, condition or provision in said lease or leases, or any of them, on its part to be performed or fulfilled, at the times and in the manner in said lease or leases provided, or if Borrower shall suffer or permit to occur any breach or default under the provisions of any assignment of any lease or leases of the premises given as additional security for the payment of the indebtedness secured hereby and such default shall continue for three (3) days, then and in any such event, such breach or default shall constitute a default hereunder.

EFFECT OF EXTENSIONS OF TIME

9. If the payment of said indebtedness 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 said 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, the right of recourse against all such persons being expressly reserved by Mortgagee, notwithstanding 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 Lender herein to amend, modify and supplement this Mortgage, the Note and the Assignment and to vary the rate of interest and the method of computing the same, and to impose additional fees and other charges, 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 holder and without the lien of this Mortgage losing its priority over the rights of any such junior lien;

Nothing in this Section contained shall be construed as waiving any provision of Sections 28 and 29 hereof which provides, among other things, that it shall constitute an Event of Default if the Premises be sold,

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

conveyed or encumbered.

EFFECT OF CHANGES IN LAWS REGARDING TAXATION

10. In the event of the enactment after this date of any law of the state in which the premises are located deducting from the value of land for the purpose of taxation any lien thereon, or imposing upon Lender the payment of whole or any part of the taxes or assessments or charge or liens herein required to be paid by Borrower, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or the Lender's interest in the property, or the manner of collection of taxes, so as to affect this mortgage or the debt secured hereby or the holder thereof, then, and in any such event, Borrower, upon demand by Lender, shall pay such taxes or assessments, or reimburse Lender therefor; provided, however, that if in the opinion of counsel for Lender (a) it might be unlawful to require Borrower to make such payment or (b) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then and in such event, Lender may elect, by notice in writing given to Borrower, to declare all of the indebtedness secured hereby to be and become due and payable sixty (60) days from the giving of such notice. Notwithstanding anything to the contrary contained herein, Lender shall not be liable for any federal, state or local income, excess profit, franchise or capital stock taxes of Borrower.

MORTGAGEE'S PERFORMANCE OF DEFAULTED ACTS

11. In case of default therein, Lender may, but need not, make any payment or perform any act herein required of Borrower in any form and manner deemed expedient, and may, but need not, 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 said premises or contest any tax or assessment. All moneys paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including attorneys' fees, and any other moneys advanced by Lender to protect the mortgaged premises and the lien hereof, shall be so much additional indebtedness secured hereby, and shall become immediately due and payable without notice and with interest thereon at a rate of three percent over prime rate then in existence annually. Inaction of Lender shall never be considered as a waiver of any right accruing to it on account of any default on the part of Borrower.

LENDER'S RELIANCE ON TAX BILLS, ETC.

12. Lender in making payment hereby authorized: (a) relating to taxes and assessments, may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or estimate or 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.

ACCELERATION OF INDEBTEDNESS IN CASE OF DEFAULT

13. Except for failure to provide the insurance described in paragraph 3 hereof for which there will be no cure period if (a) default be made in the due and punctual payment of said notes, or any installment due in accordance with the terms thereof, either of principal or interest and such default shall not be cured within the earlier of ten (10) days following the sending of notice thereof to Borrower or as otherwise provided in said notes; or (b) Borrower shall file a petition in voluntary bankruptcy or under Chapter 7, chapter 11, or Chapter 13 of the Federal Bankruptcy Code or any similar law, state, or federal, whether now or hereafter existing, or an answer admitting insolvency or inability to pay its debts within ten (10) days; or (c) Borrower shall fail to obtain a vacation or stay of involuntary proceedings within sixty (60) days, as hereinafter provided; or (d) Borrower shall be adjudicated a bankrupt, or a trustee or a receiver shall be appointed for Borrower or for all of its property or the major part thereof in any involuntary proceeding, or any court shall have jurisdiction

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

of the property for the reorganization, dissolution, liquidation or winding up of Borrower, 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 (e) Borrower 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 of its property or the major part thereof; or, (f) default shall be made in the due observance or performance of any other of the covenants, agreements or conditions hereinbefore or hereinafter contained, required to be kept or performed or observed by Borrower and the same shall continue for thirty (30) days following the delivery of notice thereof to Borrower, then and in every such case the whole of said principal sum hereby secured shall, at once, at the option of Lender, become immediately due and payable, together with accrued interest thereon, without notice to Lender.

FORECLOSURE; EXPENSE OF ALL TYPES OF LITIGATION

14. When the indebtedness hereby secured, or any part thereof, shall become due, whether by acceleration or otherwise, Lender shall have the right to foreclose the lien hereof for such indebtedness or part thereof. In any suit 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 Lender for reasonable attorneys' fees, appraiser's 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, Torrens certificates, and similar data and assurances with respect to title as mortgages may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the premises. All expenditures and expenses of the nature in this paragraph mentioned, and such expenses and fees as may be incurred in the protection of said premises, including probate, housing and building code violation, and bankruptcy proceedings, or in preparations for the commencement or defense of any proceeding or threatened suit or proceeding, shall be immediately due and payable by Borrower, with interest thereon at a rate of three percent above the then existing prime rate, annually and shall be secured by this mortgage.

APPLICATION OF PROCEEDS OF FORECLOSURE SALE

15. 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 the preceding paragraph hereof; second, all other items which under the terms hereof constitute secured indebtedness additional to that evidenced by the note, with interest thereon as herein provided; third, all principal and interest remaining unpaid on the note; fourth, any overplus to Borrower, its successors or assigns, as their rights may appear.

REMEDIES; FORBEARANCE

16. In addition to each and every remedy heretofore or hereafter described or otherwise existing bylaw or equity for Borrower's breach of any of the terms of this Mortgage or the Principal Note it secures, Borrower grants Lender, its successors and assigns, the right of set-off against and a lien upon any deposit, moneys, credits and other property held by such Lender, successor or assignee belonging to the Borrower. Each remedy provided in this Mortgage is distinct and cumulative to all other rights or remedies under this Mortgage or afforded by law or equity, and may be exercised concurrently, independently, or successively, in any order whatsoever. Lender's forbearance to exercise any remedy hereunder shall not be deemed and shall not constitute a waiver of any right or remedy hereunder.

APPOINTMENT OF RECEIVER

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

17. Upon, or 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 said premises. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency or Borrower 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 Lender hereunder or any holder of the note may be appointed as such receiver. Such receiver shall have power to collect the rents, issues and profits of said premises during the pendency of such foreclosure suit and, in case of a sale and a deficiency, during the full statutory period of redemption, whether there be redemption or not, as well as during any further times when Borrower, except for the intervention of such 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 indebtedness secured hereby, or 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 foreclosure sale; (b) the deficiency in case of a sale and deficiency.

LENDER'S RIGHT OF POSSESSION IN CASE OF DEFAULT

18. In any case in which under the provisions of this mortgage Lender has a right to institute foreclosure proceedings, whether before or after the whole 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, forthwith, upon demand of Lender, Borrower shall surrender to Lender and Lender shall be entitled to take actual possession of the premises or any part thereof personally, or by its agents or attorneys, and Lender in its discretion may, with or without force and with or without process of law, 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 Borrower or the then owner of the premises relating thereto, and may exclude Borrower, its agents or servants, wholly therefrom and may as attorney in fact or agent of Borrower, or in its own name as Borrower and under the powers herein granted, hold, operate, manage and control the premises and conduct the business, if any, thereof, 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 the 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 Borrower, 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 the 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 Borrower, and with full power to cancel or terminate any lease or sublease for any cause or on any ground which would entitle Borrower to cancel the same, to elect to disaffirm any lease or sublease made subsequent to this mortgage or subordinated to the lien hereof, to make all necessary or proper repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements to the premises as to it may seem judicious, insure and reinsure the same and all risks incidental to Lender's possession, operation and management thereof and to receive all of such avails, rents, issues and profits.

Lender shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under leases, and Borrower shall and does hereby agree to indemnify and hold Lender harmless of and for many and all liability, loss or damage which it

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

may or might incur under said leases or under or by reason of the assignment thereof and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge and of the terms, covenants or agreements contained in said leases. Should Lender incur any such liability, loss or damage, under said leases or under or by reason of the assignment thereof, or in the defense of any claims or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees, shall be secured hereby, and Borrower shall reimburse Lender therefor immediately upon demand.

APPLICATION OF INCOME RECEIVED BY LENDER

19. Lender in the exercise of the rights and powers herein conferred upon it by paragraph 18 hereof shall have full power to use and apply the avails, rents, issues and profits of the premises to the payment of or on account of the following, in such order as Lender may determine:

- (a) to the payment of the operating expenses of said property, including cost of management and leasing thereof (which shall include reasonable compensation to Lender and its agent or agents, if management be delegate 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;
- (b) to the payment of taxes and special assessments now due or which may hereafter become due on said premises;
- (c) to the payment of all repairs, decorating, renewals, replacements, alterations, additions, betterments, and improvements of said premises, and of placing said property in such condition as will, in the judgment of Lender, make it readily rentable;
- (d) to the payment of any indebtedness secured hereby or any deficiency which may result from any foreclosure sale.

LENDER'S RIGHT OF INSPECTION

20. Lender shall have the right to inspect the premises at all reasonable times and access thereto shall be permitted for that purpose.

CONDEMNATION

21. Borrower hereby assign, transfer and set over unto Lender the entire proceeds of any award or any claim for damages for any of the mortgaged property taken or damaged under the power of eminent domain or by condemnation. Lender may elect to apply the proceeds of the award upon or in reduction of the indebtedness secured hereby, whether due or not, or to require Borrower to restore or rebuild, in which event the proceeds shall be held by Lender and used to reimburse Borrower for the cost of the rebuilding or restoring or buildings or improvements on said premises, in accordance with plans and specifications to be submitted to and approved by Lender. If Borrower is obligated to restore or replace the damaged or destroyed buildings or improvements 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 or termination of such lease, the award shall be used to reimburse Borrower for the cost of the rebuilding or restoring of buildings or improvements on said premises, provided Borrower is required or authorized, either by Lender's election as aforesaid, or by virtue of any such lease, to the same manner as is provided in paragraph 4 hereof for the payment of insurance proceeds toward the cost of rebuilding or restoration. If the amount of such award is insufficient to cover the cost of rebuilding or restoration, Borrower shall pay such cost in excess of the award, before being entitled to reimbursement out of the award. Any surplus which may remain out of said award after payment of such cost of rebuilding or restoration shall, at the option of Lender, be applied on account of the indebtedness secured hereby or be paid to any other party entitled thereto.

RELEASE UPON PAYMENT AND DISCHARGE OF BORROWER'S OBLIGATIONS

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

22. Lender shall release this mortgage and the lien thereof by proper instrument upon payment and discharge of all indebtedness secured hereby and payment of a reasonable fee to Lender for the execution of such release.

GIVING OF NOTICE

23. Any notice which either party hereto may desire or be required to give to the other party shall be in writing and the mailing thereof by certified mail addressed to Borrower at 770 N. Halsted, Suite 205, Chicago, Illinois 60622 or to the Lender at its place of business or at such other place as any party hereto may by notice in writing designate as a place for service of notice, shall constitute service of notice hereunder.

WAIVER OF STATUTORY RIGHTS

24. Borrower shall not and will not apply for or avail itself of any appraisal, valuation, stay, extension or exemption laws, or any so-called "moratorium laws", now existing or hereafter enacted, in order to prevent or hinder the enforcement of foreclosure of this mortgage, but hereby waives the benefit of such laws. Borrower for themselves and all who may claim through or under it waives any and all right to have the property and estates comprising the mortgaged property marshalled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the mortgaged property sold as an entirety. Borrower hereby waives all rights of homestead exemption in the premises and any and all rights of redemption from sale under any order or decree of foreclosure of this mortgage on its behalf and on behalf of each and every person, except decree or judgment creditors of Borrower, acquiring any interest in or title to the premises subsequent to the date of this mortgage.

FURNISHING OF FINANCIAL STATEMENTS TO LENDER

25. Borrower covenant and agree to furnish to Lender such financial statements as Lender may reasonably require.

BINDING ON SUCCESSORS AND ASSIGNS

26. This mortgage and all provisions hereof, shall extend to and be binding upon Borrower and all persons claiming under or through Borrower, and the word "Borrower" when used herein shall include all such persons and all persons liable for the payment of the indebtedness or any part thereof, whether or not such persons shall have executed the note or this mortgage. The word "Lender" when used herein shall include the successors and assigns of Lender named herein, and the holder or holders, from time to time, of the note secured hereby.

LESSEE ATTORNMENT

27. In the event of the enforcement by Lender of the remedies provided for by the law or by this Mortgage, the lessee under each lease of all or any part of the Premises made after the date of recording this Mortgage, if any, shall, at the option of the Lender, attorn to any person succeeding to the interest of Lender, as a result of such enforcement and shall recognize such successor in interest as landlord under such lease without change in the terms or other provisions thereof, provided, however, that the said successor in interest shall not be bound by any payment of rent or additional rent for more than one month in advance or any amendment or modification to any lease made without the prior written consent of Lender or said successor in interest, shall execute and deliver an instrument or instruments confirming such attornment, and Borrower shall cause each such lease of all or any part of the Premises to contain a covenant on the lessee's part evidencing its agreement to such attornments.

TRANSFER OF PROPERTY OR INTEREST BY BORROWER; ASSUMPTION

28. Upon sale or transfer of (1) all or any part of the premises, or any interest therein, or (ii) any beneficial interest in any land trust which may now or hereafter acquire title to the premises, to any person or entity, Lender may, at its option, declare all sums secured by this Mortgage to be immediately due and payable, and Lender may invoke any other remedies

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

provided by this Mortgage, law or equity. This option shall not apply when the Lender prior to the transfer or sale consents in writing to such transfer or sale subject to whatever terms the Lender may require, including, an increase in the rate of interest payable under the note secured hereby.

29. Borrower covenant and agree that it will not, without the prior written consent of Lender, which shall not be unreasonably withheld, further mortgage, grant a deed of trust, pledge or otherwise dispose of or further encumber, whether by operation of law or otherwise, any or all of its interest in the premises and any such mortgage, deed of trust, pledge or encumbrance made without the Lender's prior written consent shall be null and void and the making thereof shall constitute a default under this Mortgage.

30. The Borrower represent and warrant that the Premises complies in all material respects and covenants and agrees to cause the Premises to at all times comply, with all applicable federal, state, regional, county or local laws, statutes, rules, regulations or ordinances or ordinances, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. ss 9601 et seq., the Resource Conservation and Recovery Amendments of 1976, as amended by the Solid and Hazardous Waste Amendments of 1984, 42 U.S.C. ss 6901 et seq., the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977, 33 U.S.C. ss 2601 et seq., the Emergency Planning and Community Right-to-know Act of 1986, 42 U.S.C. ss 11001 et seq., the Clean Air Act of 1966, as amended, 42 U.S.C. ss 7401 et seq., the National Environmental Policy Act of 1975, 42 U.S.C. ss 4321, the Rivers and Harbours Act of 1899, 33 U.S.C. ss 401 et seq., the Occupational Safety and Health Act of 1970, 29 U.S.C. ss 551 et seq., and the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. s300(f) et seq., and all rules, regulations and guidance documents promulgated or published thereunder, and any state, regional, county or local statute, law, rule, regulation or ordinance relating to public health, safety or the environment, including, without limitation, relating to release, discharges, emissions or disposals to air, water, land or groundwater, to the withdrawal or use of groundwater, to the use, handling or disposal of polychlorinated biphenyls (PCB's), asbestos or urea formaldehyde, to the treatment, storage disposal or management of hazardous substances (including, without limitation, petroleum, its derivatives, by-products or other hydrocarbons), to exposure to toxic, hazardous, or other controlled, prohibited or regulated substances, to the transportation, storage, disposal, management or release of gaseous or liquid substances, and any regulation, order, injunction, judgement, declaration, notice of demand issued thereunder.

31. The Borrower represent and warrant that it has not given, nor should it give, nor has it received, any notice, letter, citation, order, warning, complaint, injury, claim or demand that: (i) the Borrower has violated, or is about to violate, any federal, state, regional, county or local environmental, health or safety statute, law, rule, regulation, ordinance, judgement or order; (ii) there has been a release, or there is threat of release, of hazardous substances (including, without limitation, petroleum by its by-products or derivatives or other hydrocarbons) from the Premises; (iii) the Borrower may be or is liable, in whole or in part, for the costs of cleaning up, remediating or responding to a release of hazardous substances (including, without limitation, petroleum, its by-products or derivatives, or other hydrocarbons); (iv) any of the Borrower's property or assets are subject to a lien in favor of any Governmental Body for any liability, costs or damages, under federal, state or local environmental law, rule or regulation arising from or costs incurred by such governmental entity in response to a release of a hazardous substance (including, without limitation, petroleum, its by-products or derivatives, or other hydrocarbons). In the event that the Borrower receives or gives any notice of the type described in this Section 26, the Borrower shall promptly provide a copy of to Mortgagee, and in no event, later than fifteen (15) days from the Borrower's receipt or submission thereof.

CAPTION

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

32. The captions and headings of various paragraphs of this mortgage are for convenience only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

The Borrower hereby 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, except decree or judgment creditors of Borrower, acquiring any interest in or title to the premises subsequent to the date of the mortgage.

IN WITNESS WHEREOF, Borrower have caused these present to be signed, as of the day, month and year, first above written.

DEVON BANK, not personally, but as Trustee as aforesaid

BY: [Signature]
TRUST OFFICER

ATTEST: [Signature]
Mary L. Plotke, Trust Administrator

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, Anna Kowal, a Notary Public in and for the county aforesaid, hereby certify, that on this 8th day of December 1992, personally appeared Deborah L. Brown and Mary L. Plotke, personally known to me to be Trust Officer, and TRUST ADMINISTRATOR of Devon Bank and that they acknowledged the foregoing Mortgage to be the free and voluntary act and deed for the uses and purposes set forth therein.

SUBSCRIBED AND SWORN
before me this 8th day
of December, 1992.

[Signature]
Notary Public



92042471

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

THIS INSTRUMENT PREPARED BY:

JANE I. KULIBABA
DEVON BANK
6445 N. WESTERN AVENUE
CHICAGO, ILLINOIS 60645-5494

AND AFTER RECORDING, RETURN TO:

JANE I. KULIBABA
DEVON BANK
6445 N. WESTERN AVENUE
CHICAGO, ILLINOIS 60645-5494

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT A

LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF

PARCEL 1:

Lot Number 7 in Subdivision of Lot 3 with the North part of Lot 2, in Block 9, in Sheffield's Addition to Chicago, in Section 32, Township 40 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

PIN: 14-32-403-032-0000

Address: 1936 N. Sheffield, Chicago, Illinois

PARCEL 2:

Lot 8 in Block 3 in the Subdivision by George Taylor Trustee of the North 10 Acres of that Part of the South 1/2 of the South East 1/4 of Section 7 and South 1/2 of the South West 1/4 of Section 8, Township 40 North, Range 14 East of the Third Principal Meridian, lying between Green Bay Road and the Chicago and Northwestern Railroad in Cook County, Illinois.

PIN: 14-07-414-011-0000

Address: 4917-23 N. Heritage, Chicago, Illinois

PARCEL 3:

Lot 25 and the South 5 feet of Lot 26 in Block 12 in Cochran's Third Addition to Edgewater in Section 1, Township 40 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois.

PIN: 14-08-118-019-0000

Address: 1352-54 W. Berwyn, Chicago, Illinois

UNOFFICIAL COPY

This instrument is executed by Devon Bank, not individually but solely as Trustee as aforesaid. All the covenants and conditions to be performed hereunder by Devon Bank are undertaken by it solely as Trustee as aforesaid and not individually, and no personal or individual liability shall be asserted or enforceable against Devon Bank by reason of any of the covenants, statements, representations, indemnifications or warrants expressed or implied herein contained in this instrument.

It is expressly understood and agreed by every person, firm or corporation claiming any interest under this document that Devon Bank, shall have no liability, contingent or otherwise, arising out of, or in any way related to, (i) the presence, disposal, release or threatened release of any hazardous materials, or (ii) the contamination or afflicting the property or the soil, water, vegetation, buildings, personal property, persons or animals thereto; (iii) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such hazardous materials; (iv) any lawsuit brought or threatened, judgment rendered or governmental order relating to such hazardous materials, and/or (v) any violation of laws, orders, regulations, requirements, or decrees, or government authorizations, or any policies or requirements of the trustee which are based upon or in any way related to such hazardous materials including, without limitation, attorney's and consultants' fees, investigation and laboratory fees, court costs, and litigation expenses.

In the event of any conflict between the provisions of this escrowary order and the provisions of the document to which it is attached, the provisions of this order shall govern.

Property of COOK COUNTY Clerk's Office
929942474