

# UNOFFICIAL COPY

92009195  
9 2 0 0 7 1 9

This instrument prepared by and,  
after Recording return to:

Tax Index No.  
03-17-399-999-1068

William J. Mitchell  
KECK, MAHIN & CATE  
1515 East Woodfield Road  
Suite 250  
Schaumburg, Illinois 60173-5431

Street Address:  
2023 Stanton  
Arlington Heights, IL

## JUNIOR MORTGAGE AND SECURITY AGREEMENT WITH ASSIGNMENT OF RENTS

Re: Shaw, Eisenberg, Floyd & Rothchild

THIS JUNIOR MORTGAGE is made this 26<sup>th</sup> day of November, 1991, by and between GERALD L. ROTHCHILD ("Rothchild") and BARBARA E. ROTHCHILD ("Mrs. Rothchild"), as joint tenants (collectively, "Mortgager") and LASALLE BANK WESTMONT, a corporation organized under the laws of the United States of America ("Mortgagee").

### RECITALS

Rothchild is a general partner of the public accounting firm of Shaw, Eisenberg, Floyd & Rothchild ("Borrower"). Pursuant to that certain "Guaranty" dated as of even date herewith, Rothchild, as such guarantor guaranteed the payment and performance of certain loans (the "Loans") made by Mortgagee, and evidenced by certain promissory notes (the "Notes") each dated as of even date herewith and made by Borrower payable to the order of Mortgagee in the aggregate principal amount of \$400,000. The Notes are secured by certain "Collateral Documents", as defined in that certain Credit Construction Loan and Security Agreement ("Loan Agreement") also dated as of even date herewith and to which Rothchild is signatory.

Pursuant to the Loan Agreement, Rothchild agreed to cause the "Mortgage Premises" (as hereinafter defined) to be pledged as collateral securing the repayment of the Notes in consideration for Mortgagee agreeing to make the Loans. As Guarantor of the Loan, Rothchild shall be benefited by the making of the Loans to the Borrower. As the wife of Rothchild, Mrs. Rothchild will receive direct and measurable personal and family benefit from the making of the Loans and the fact that Rothchild will be directly benefited by the same.

SEFI-01 RECORDING 461.00  
784444 TRAN 9793 01/07/92 11:56:00  
1614 FD \*--92-007195  
COOK COUNTY RECORDER

92009195

BOX 395

9/6/91

# UNOFFICIAL COPY

ACCORDINGLY, to secure the payment of the principal and premium, if any, of interest on the Notes as when the same becomes due and payable (whether by lapse of time, acceleration or otherwise), the payment of all other indebtedness, obligations and liabilities which this Mortgage secures pursuant to any of its terms and the observance and performance of all covenants and agreements contained herein or in the Loan Agreement, the Notes or in any of the other Collateral Documents (collectively, the "Loan Documents"), all of such indebtedness, obligations and liabilities being hereinafter collectively referred to as the "indebtedness hereby secured", Mortgagor does hereby grant, bargain, sell, convey, mortgage, assigning, and pledge to Mortgagee, its successors and assigns, a security interest in all and singular the properties, rights interests and privileges described in Granting Clauses I, II, III, IV, V and VI below, all of the same being collectively referred to as the "Mortgaged Premises".

## GRANTING CLAUSE I

That certain real estate commonly known as 2023 Stanton, Arlington Heights, Cook County, Illinois, as legally described in Schedule I attached hereto and made a part hereof.

## GRANTING CLAUSE II

All buildings and improvements of every kind and description heretofore or hereafter erected or placed on the property described in Granting Clause I and all materials intended for construction, reconstruction, alteration, and repairs of the buildings and improvements now or hereafter erected thereon, all of which materials shall be deemed to be included within the premises immediately upon the delivery thereof to the said real estate, and all fixtures, machinery, apparatus, equipment, fittings and articles of personal property of every kind and nature whatsoever now or hereafter attached to or contained in or used or useful in connection with said real estate and the buildings and improvements now or hereafter located thereon and the operation, maintenance and protection thereof, including but not limited to all machinery, motors, fittings, radiators, awnings, shades, screens, all gas, coal, steam, electric, oil, and other heating, cooking, power and lighting apparatus, all cooling and ventilating apparatus and systems, all plumbing, incinerating, and sprinkler equipment, and fixtures, all elevators and escalators, all communication and electronic monitoring equipment, all window and structural cleaning rigs and all other machinery and equipment of every nature and fixtures and appurtenances thereto and all items of furniture, appliances, draperies, carpets, other furnishings, equipment and personal property used or useful in the operation, maintenance, and protection of the said real estate and the buildings and replacements thereof or articles in substitution therefor,

# UNOFFICIAL COPY

whether or not the same are or shall be attached to said real estate, buildings or improvements in any manner; it being mutually agreed, intended, and declared that all the aforesaid property shall, so far as permitted by law, be deemed to form a part and parcel of the real estate and for the purpose of this Mortgage to be real estate and covered by this Mortgage; and as to the balance of the property aforesaid, this Mortgage is hereby deemed to be as well a Security Agreement under the provisions of the Uniform Commercial Code for the purpose of creating hereby a security interest in said property, which is hereby granted by Mortgagor as debtor to Mortgagee as secured party, securing the indebtedness hereby secured.

## GRANTING CLAUSE III

All right, title and interest of Mortgagor now owned or hereafter acquired in and to all and singular the estates, tenements, hereditaments, privileges, easements, licenses, franchises, appurtenances, and royalties, mineral, oil, and water rights belonging or in any wise appertaining to the property described in the proceeding Granting Clause I and the buildings and improvements now or hereafter located thereon and the reversions, rents, issues, revenues and profits thereof, including all interest of Mortgagor in all rents, issues, and profits of the aforementioned property and all rents, issues, profits, revenues, royalties, bonuses, rights and benefits due, payable, or accruing (including all deposits of money as advanced rent or for security) under any and all leases or subleases and renewals thereof of, or under any contracts or options for the sale of all or any part of, said property (including during any period allowed by law for the redemption of said property after any foreclosure or other sale), together with the right, but not the obligation, to collect, receive, and receipt for all such rents and other sums and apply them to the indebtedness hereby secured and to demand, sue for and recover the same when due or payable; provided that the assignments made hereby shall not impair or diminish the obligations of Mortgagor under the provisions of such leases or other agreements nor shall such obligations be imposed upon Mortgagee. By acceptance of this Mortgage, Mortgagee agrees, not as a limitation or condition hereof, but as a personal covenant available only to Mortgagor that until any indebtedness secured hereby is not paid when due, Mortgagor may collect, receive (but not more than 30 days in advance), and enjoy such rents.

## GRANTING CLAUSE IV

All judgments, awards of damages, settlements, and other compensation heretofore or hereafter made resulting from condemnation proceedings or the taking of the property described in Granting Clause I or any part thereof or any building or other improvement now or at any time hereafter located thereon or any

# UNOFFICIAL COPY

970019

easement or other appurtenance thereto under the power of eminent domain, or any similar power or right (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 the payment thereof), whether permanent or temporary, or for any damage (whether caused by such taking or otherwise) to said property or any part thereof or the improvements thereon or any part thereof, or to any rights appurtenant thereto, including severance and consequential damage, and any award for change of grade of streets (collectively "Condemnation Awards").

## GRANTING CLAUSE V

All property and rights, if any, which are by the express provisions of this instrument required to be subject to the lien hereof and any additional property and rights that may from time to time hereafter, by installation or writing of any kind, be subjected to the lien hereof by Mortgagor or by anyone in Mortgagor's behalf

## GRANTING CLAUSE VI

All rights in and to common areas or access roads on adjacent properties heretofore or hereafter granted to Mortgagor and any after-acquired title reversion in and to the beds of any ways, roads, streets, avenues and alleys adjoining the property described in Granting Clause I or any part thereof.

TO HAVE AND TO HOLD the Mortgaged Premises and the properties, rights and privileges hereby granted, bargained, sold, conveyed, mortgaged, pledged, and assigned, and in which a security interest is granted, or intended so to be, unto Mortgage, its successors and assigns, forever, provided, however, that this instrument is upon the express condition that if the principal of and interest on the Notes shall be paid in full and other indebtedness hereby secured shall be fully paid and performed, then this instrument and the estate and rights hereby granted shall cease, determine, and be void and this instrument shall be released by Mortgagee upon the written request and at the expense of Mortgagor, otherwise to remain in full force and effect.

Mortgagor hereby covenants and agrees with Mortgagee as follows:

1. PAYMENT OF THE INDEBTEDNESS. The indebtedness hereby secured will be promptly paid as and when the same becomes due.
2. FURTHER ASSURANCES. Mortgagor will execute and deliver such further instruments and do such further acts as may be necessary or proper to carry out more effectively the purpose of this instrument and, without limiting the foregoing, to make

# UNOFFICIAL COPY

subject to the lien hereof any property agreed to be subjected hereto or covered by the Granting Clauses hereof or intended so to be.

3. POSSESSION. While Mortgagor is not in default hereunder, Mortgagor shall be suffered and permitted to remain in full possession, enjoyment, and control of the Mortgaged Premises, subject always to the observance and performance of the terms of this instrument.

4. PAYMENT OF TAXES. Mortgagor shall pay before any penalty attaches, all general taxes and all special taxes, special assessments, water, drainage and sewer charges, and all other charges of any kind whatsoever, ordinary or extraordinary, which may be levied, assessed, imposed or charged on or against the Mortgaged Premises or any part thereof and which, is unpaid, might by law become a lien or charge upon the Mortgaged Premises or any part thereof, and shall, upon written request, exhibit to Mortgagee official receipts evidencing such payments, except that, unless and until foreclosure, distraint, sale, or other similar proceedings shall have been commenced, no such charge or claim need be paid if being contested (except to the extent any full or partial payment shall be required by law), after notice to Mortgagee, by appropriate proceedings which shall operate to prevent the collection thereof or the sale or forfeiture of the Mortgaged Premises or any part thereof to satisfy the same, conducted in good faith and with due diligence and if Mortgagor shall have furnished such security if any, as may be required in the proceedings if requested by Mortgagee.

5. PAYMENT OF TAXES ON NOTE, MORTGAGE, OR INTEREST OF MORTGAGEE. Mortgagor agrees that if any tax, assessment, or imposition upon this Mortgage or the indebtedness hereby secured or the Notes or the interest of Mortgage in the Mortgaged Premises or upon Mortgagee by reason of or as a holder of any of the foregoing (including, without limitation, corporate privilege, franchise and excise taxes, but excepting therefrom any income tax on interest payments on the principal portion of the indebtedness hereby secured imposed by the United States or any State) is levied, assessed, or charged, then unless all such taxes are paid by Mortgagor to, for, or on behalf of Mortgagee as they become due and payable (which Mortgagor agrees to do upon demand of Mortgagee, to the event permitted by law), or Mortgagee is reimbursed for any such sum advanced by Mortgagee, all sums hereby secured shall become immediately due and payable, at the option of Mortgagee, upon 30 days' notice to Mortgagor, notwithstanding anything contained herein or in any law heretofore or hereafter enacted, including any provision hereof forbidding Mortgagor from making any such payment. Mortgagor agrees to exhibit to Mortgagee, upon request, official receipts showing payment of all taxes and charges which Mortgagor is required to pay hereunder.



# UNOFFICIAL COPY

92009195

6. RECORDATION AND PAYMENT OF TAXES AND EXPENSES INCIDENT THERETO. Mortgagor will cause this Mortgage, all mortgages prior and supplemental hereto and any financing statement or other notice of a security interest required by Mortgagee at all times to be kept, recorded and filed at its own expense in such manner and in such places as may be required by law for the recording and filing or for the rerecording and refiling of a mortgage, security interest, assignment of other lien or charge upon the Mortgaged Premises, or any part thereof, in order to fully preserve and protect the rights of Mortgagee hereunder and, without limiting the foregoing, Mortgagor will pay or reimburse Mortgagee for the payment of any and all taxes, fees or other charges incurred in connection with any such recordation or recordation, including any documentary stamp tax or tax imposed upon the privilege of having this instrument or any instrument issued pursuant hereto recorded.

7. INSURANCE. Mortgagor will, at its expense, keep all buildings, improvements, equipment and other property now or hereafter constituting part of the Mortgaged Premises insured against loss or damage by fire, lightning, windstorm, explosion and other such risks as are usually included under extended coverage policies, or which are usually insured against by owners of like property, in amount sufficient to prevent Mortgagor or Mortgagee from becoming a co-insurer of any partial loss under applicable policies and in any event not less than the then full insurable value (actual replacement value without deduction for physical depreciation) thereof, as determined at the request of Mortgagee and at Mortgagor's expense by the insurer or insurers or by an expert approved by Mortgagee, all under insurance policies payable, in case of loss or damage, to Mortgagee, such rights to be evidenced by the usual standard non-contributory form of mortgage clause to be attached to each policy. Mortgagor shall not carry separate insurance, concurrent in kind or form and contributing in the event of loss, with any insurance required hereby. Mortgagor shall also obtain and maintain public liability, property damage, and workmen's compensation insurance in each case in form and content satisfactory to Mortgagee and in amounts as are customarily carried by owners of like property and approved by Mortgagee. Mortgagor shall also obtain and maintain such other insurance with respect to the Mortgaged Premises in such amounts and against such insurable hazards as Mortgagee from time to time may require, including, without limitation, boiler and machinery insurance, insurance against flood risks, host liquor liability, war risk insurance when and to the extent obtainable from the United States Government or any agency thereof, and insurance against loss of rent due to fire and risks now or hereafter embraced by so-called "extended coverage." All insurance required hereby shall be maintained with good and responsible insurance companies satisfactory to Mortgagee and shall not provide for any deductible amount not approved in

92009195

writing by Mortgagee, shall provide that any losses shall be payable notwithstanding any act or negligence of Mortgagor, shall provide that no cancellation thereof shall be effective until at least thirty days after receipt by Mortgagor and Mortgagee of written notice thereof, and shall be satisfactory to Mortgagee in all other respects. Upon the execution of this Mortgage and thereafter not less than 15 days prior to the expiration date of any policy delivered pursuant to this instrument, Mortgagor will deliver to Mortgagee originals of any policy or renewal policy, as the case may be, required by this instrument, bearing notations evidencing the payment of all premiums. In the event of foreclosure, Mortgagor authorized and empowers Mortgagee to effect insurance upon the Mortgage Premises in amounts aforesaid for a period covering the time of redemption from foreclosure sale provided by law, and, if necessary therefor, to cancel any or all existing insurance policies.

8. DAMAGE TO OR DESTRUCTION OF MORTGAGED PREMISES.

(a) Notice. In case of any material damage to or destruction of the Mortgaged Premises or any part thereof, Mortgagor shall promptly give written notice thereof to Mortgagee, generally describing the nature and extent of such damage or destruction.

(b) Restoration. In case of any damage to or destruction of the Mortgaged Premises or any part thereof, Mortgagor, whether or not the insurance proceeds, if any, received on account of such damage or destruction shall be sufficient for the purpose, at Mortgagor's expense, will promptly commence and complete (subject to unavoidable delays occasioned by strikes, lockouts, acts of God, inability to obtain labor or materials, governmental restrictions and similar causes beyond the reasonable control of Mortgagor) the restoration, replacement, or rebuilding of the Mortgaged Premises as nearly as possible to its value, condition, and character immediately prior to such damage or destruction.

(c) Adjustment of Loss. Mortgagor hereby authorizes Mortgagee, at Mortgagee's option, to adjust and compromise any losses under any insurance afforded, but unless Mortgagee elects to adjust the losses as aforesaid, said adjustment and/or compromise shall be made by Mortgagor, subject to final approval of Mortgagee in the case of losses exceeding TEN THOUSAND AND NO/100 (\$10,000) DOLLARS.

(d) Application of Insurance Proceeds. Net insurance proceeds received by Mortgagee under the provisions of this Mortgage or any instruments supplemental hereto or thereto or under any policy or policies of insurance covering the Mortgaged Premises or any part thereof shall first by

applied toward the payment of the amount owing on the indebtedness hereby secured in such order of application as Mortgagee may elect whether or not the same may then be due or be otherwise adequately secured; provided, however, that Mortgagee shall have the right, but not the duty, to release the proceeds thereof for use in restoring the Mortgaged Premises or any part thereof for or on behalf of Mortgagor in lieu of applying said proceeds to the indebtedness hereby secured and for such purpose may do all acts necessary to complete such restoration, including advancing additional funds, and any additional funds so advanced shall constitute part of the indebtedness hereby secured and shall be payable on demand with interest at the rate of interest the Notes bear at the time funds are advanced.

9. EMINENT DOMAIN. Mortgagor acknowledges that condemnation awards have been assigned to Mortgagee, which awards Mortgagee is hereby irrevocably authorized to collect and receive, and to give appropriate receipts and acquittances therefor, and at Mortgagee's option, to apply the same toward the payment of the amount owing on account of the indebtedness hereby secured in such order of application as Mortgagee may elect and whether or not the same may then be due and payable or otherwise adequately secured and Mortgagor covenants and agrees that Mortgagor will give Mortgagee immediate notice of the actual or threatened commencement of any proceedings under condemnation or eminent domain affecting all or any part of the Mortgaged Premises including any easement therein or appurtenance thereof or 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 permanent or temporary under any such proceeding.

10. CONSTRUCTION, REPAIR, WASTE, ETC.. Mortgagor agrees that no building or other improvement on the Mortgaged Premises and constituting a part thereof shall be altered, removed, or demolished nor shall any fixtures or appliances on, in, or about said buildings or improvements be severed, removed, sold or mortgaged, without the consent of Mortgagee and in the event of the demolition or destruction in whole or in part of any or the fixtures, chattels, or articles of personal property covered hereby, Mortgagee covenants that the same will be replaced promptly by similar fixtures, chattels, and articles of personal property at least equal in quality and condition to those replaced, free from any security interest in or encumbrance thereon or reservation of title thereto; to permit, commit, or



suffer no waste, impairment, or deterioration of the Mortgaged Premises or any part thereof; to keep and maintain said Mortgaged Premises and every part thereof in good and first class repair and condition; to effect such repairs as Mortgagee may reasonably require and from time to time to make all needful and proper replacements and additions so that said building, fixtures, machinery, and appurtenances will, at all times, be in good and first class condition, fit, and property for the respective purposes for which they were originally erected or installed; to comply with all statutes, orders, requirements, or decrees relating to the Mortgaged Premises by any Federal, State or Municipal authority; to observe and comply with all conditions and requirements necessary to preserve and extend any and all rights, licenses, permits (including, but not limited to, zoning variances, special exceptions and non-conforming uses), privileges, franchises, and concessions which are applicable to the Mortgaged Premises or which have been granted to or contracted for by Mortgagor in connection with any existing or presently contemplated use of the Mortgaged Premises or any part thereof and not to initiate or acquiesce in any changes to or terminations of any of the foregoing or of zoning classifications affecting the use to which the Mortgaged Premises or any part thereof may be put without the prior written consent of Mortgagee; and to make no material alterations in or improvements or additions to the Mortgaged Premises except as required by governmental authority or as permitted by Mortgagee.

11. LIENS AND ENCUMBRANCES. Mortgagor will not, without the prior written consent of Mortgagee, directly or indirectly, create or suffer to be created or to remain and will discharge or promptly cause to be discharged any mortgage, lien, encumbrance, or charge on, pledge of, or conditional sale or other title retention agreement with respect to, the Mortgaged Premises or any part thereof, whether superior or subordinate to the lien hereof, except for this instrument.

12. RIGHT OF MORTGAGEE TO PERFORM MORTGAGOR'S COVENANT, ETC.. If Mortgagor shall fail to make any payment or perform any act required to be made or performed hereunder, Mortgagee, without waiving or releasing any obligation of default, may (but shall be under no obligation to) at any time thereafter make such payment or perform such act for the account and at the expense of Mortgagor, and may enter upon the Mortgaged Premises or any part thereof for such purpose and take all such action thereon as, in the opinion of Mortgagee, may be necessary or appropriate therefor. All sums to be paid by Mortgagee and all costs and expenses (including, without limitation, reasonable attorney's fees and expenses) so incurred, together with interest thereon from the date of payment or incurrence at the interest rate applicable to the Notes on such date, shall constitute so much additional indebtedness hereby secured and shall be paid by Mortgagor to Mortgagee on demand. Mortgagee in making any

# UNOFFICIAL COPY

3 2 0 0 3 1 9

payment authorized under this Section relating to taxes or 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. Mortgagee, in performing any act hereunder, shall be the sole judge of whether Mortgagor is required to perform same under the terms of this Mortgage.

13. AFTER-ACQUIRED PROPERTY. Any and all property hereafter acquired which is of the kind or nature herein provided, or intended to be and become subject to the lien hereof shall ipso facto, and without any further conveyance, assignment or act on the part of Mortgagor, become and be subject to the lien of this Mortgage as fully and completely as though specifically described herein; but nevertheless Mortgagor shall from time to time, if requested by Mortgagee, execute and deliver any and all such further assurances, conveyances, and assignments as Mortgagee may reasonably require for the purpose of expressly and specifically subjecting to the lien of this Mortgage all such property.

14. INSPECTION BY MORTGAGEE. Mortgagee and any participant in the indebtedness hereby secured shall have the right to inspect the Mortgaged Premises at all reasonable times and access thereto shall be permitted for that purpose.

15. FINANCIAL REPORTS. Mortgagor will furnish to the Mortgagee such information and data with respect to the financial condition, business affairs, and operations of Mortgagor and the Mortgaged Premises as may be reasonably requested (all such information and data to be prepared in accordance with generally accepted accounting principles consistently applied).

16. SUBROGATION. Mortgagor acknowledges and agrees that Mortgagee shall be subrogated to any lien discharged out of the proceeds of the Loans evidenced by the Notes or out of any advance by Mortgagee hereunder, irrespective of whether or not any such lien may have been released of record.

17. EVENTS OF DEFAULT. Any one or more of the following shall constitute an event of default hereunder:

(a) Default for more than 10 days in the payment, when due (whether by lapse of time, acceleration, or otherwise) of the principal of, or interest on, the Notes or of any other indebtedness hereby secured; or

(b) Default for more than 30 days after written notice in the observance or compliance with any other terms or provisions of this Mortgage or the Notes or of any separate assignment of leases and/or rents securing the Notes or of

# UNOFFICIAL COPY

3 2 0 0 1 9 1

the Loan Documents or of any other instrument or document securing the Notes or relating thereto; or

(c) Any representation or warranty made by Mortgagor herein or in any separate assignment of leases and/or rents securing the Notes or in any of the Loan Documents or in any other instrument or document securing the Notes or relating thereto or in any statement or certificate furnished by it pursuant hereto or thereto proves to be untrue in any material respect as of the date of issuance or making thereof; or

(d) Any indebtedness, obligation of liability of the Mortgagor (or of any beneficiary of Mortgagor who has guaranteed payment of the Note), at any time owing to Mortgagee shall not be paid when due (whether by lapse of time, acceleration, or otherwise) provided that the foregoing shall constitute an event of default only if and so long as Mortgagee is the holder of the Note; or

(e) The Mortgaged Premises or any part thereof shall be sold, transferred, or conveyed, whether voluntarily or involuntarily, by operation of law or otherwise, except for sales of obsolete, worn out, or unusable fixtures or personal property which are replaced with similar fixtures or personal property at least equal in quality and condition to those sold, free of any lien, charge, or encumbrance other than the lien hereof; or

(f) All or any portion of the beneficial interest in Mortgagor, if any, is encumbered or sold, transferred, assigned or conveyed, whether voluntarily or involuntarily; or

(g) Any indebtedness secured by a lien or charge on the Mortgaged Premises or any part thereof is not paid when due or proceedings are commenced to foreclose or otherwise realize upon any such lien or charge or to have a receiver appointed for the property subject thereto or to place the holder of such indebtedness or its representative in possession thereof; or

(h) Mortgagor or any other person, firm, or corporation at any time guaranteeing all or any part of the indebtedness hereby secured (a "Guarantor") becomes insolvent or bankrupt or admits in writing its inability to pay its debts as they mature, or fails to pay its debts as they become due, or makes an assignment for the benefit of creditors or applies for or consents to the appointment of a trustee, custodian, or receiver for the major part of its property or such a trustee, custodian, or receiver is appointed for Mortgagor or a Guarantor or for the major part

# UNOFFICIAL COPY

0 2 0 0 2 1 9 1

of the properties of any of them and is not discharged within 30 days after such readjustment, liquidation, dissolution, or other proceedings for relief under any present or future bankruptcy law or laws or other statute, law, or regulation for the relief of debtors are instituted by or against Mortgagor or any Guarantor and if instituted against any such party are consented to or acquiesced in or are not dismissed within 45 days after such institution, or Mortgagor or any Guarantor takes any action in contemplation of or furtherance of any of the foregoing; or

(i) Any event occurs or condition exists which is specified as an event of default in any separate assignment of leases and/or rents securing the Notes or of any other instrument or document securing the Notes or relating thereto, including without limitation those documents described in Paragraph (b) above; or

(j) Any financial or other information submitted by any Guarantor to Mortgagee proves untrue in any material respect; or

(k) The Mortgaged Premises is abandoned.

18. REMEDIES. When any indebtedness secured hereby (including without limitation any principal or interest on the Note) is not paid when due (regardless of the pendency of any proceeding which has or might have the effect of preventing Mortgagor from complying with the terms of this instrument and of the adequacy of the security for the Note) and in addition to such other rights as may be available under applicable law, but subject at all times to any mandatory legal requirements:

(a) Acceleration. Mortgagee may, by written notice to Mortgagor, declare the Notes and all unpaid indebtedness of Mortgagor hereby secured, including any interest then accrued thereon, to be forthwith due and payable, whereupon the same shall become and be forthwith due and payable, without other notice or demand of any kind.

(b) Uniform Commercial Code. Mortgagee shall, with respect to any part of the Mortgaged Premises continuing property of the type in respect of which realization on a lien or security interest granted therein is governed by the Uniform Commercial Code, have all the rights, options, and remedies of a secured party under the Uniform Commercial Code of Illinois, including, without limitation, the right to the possession of any such property or any part thereof, and the right to enter without legal process any premises where any such property may be found. Any requirements of said Code for reasonable notification shall be met by mailing written notice to Mortgagor at its address above set



# UNOFFICIAL COPY

9 2 0 0 1 9

forth at least 10 days prior to the sale or other event for which such notice is required. The expense of retaking, selling, and otherwise disposing of said property, including therewith, shall constitute so much additional indebtedness hereby secured and shall be payable upon demand with interest at the interest rate applicable to the Notes at the time the expense is incurred.

(c) Foreclosure. Mortgagee may proceed to protect and enforce the rights of Mortgagee hereunder (i) by an action at law, suit in equity, or other appropriate proceedings, whether for the specific performance of any agreement contained herein, or for an injunction against the violation of any of the terms hereof, or in aid of the exercise of any power granted hereby or by law, or (ii) by the foreclosure of this Mortgage.

(d) Appointment of Receiver. Mortgagee shall, as a matter of right, without notice and without giving bond to Mortgagor or anyone claiming by, under, or through it, and without regard to the solvency or insolvency of Mortgagor or its beneficiaries or the then value of the Mortgaged Premises, be entitled to have a receiver appointed of all or any part of the Mortgaged Premises and the rents, issues, and profits thereof, with such power as the court making such appointment shall confer, and Mortgagor hereby consents to the appointment of such receiver and shall not oppose any such appointment. Any such receiver may, to the extent permitted under applicable law, without notice, enter upon and take possession of the Mortgaged Premises or any part thereof by force, summary proceedings, ejectment or otherwise, and may remove Mortgagor or other persons and any and all property therefrom, and may hold, operate, and manage the same and receive all earnings, income, rents, issues, and proceeds accruing with respect thereto or any part thereof, whether during the pendency of any foreclosure or until any right of redemption shall expire or otherwise.

(e) Taking Possession, Collecting Rents, Etc. Mortgagee may enter and take possession of the Mortgaged Premises or any part thereof and manage, operate, insure, repair, and improve the same and take any action which, in Mortgagee's judgment, is necessary or proper to conserve the value of the Mortgaged Premises. Mortgagee may also take possession of, and for these purposes use, any and all personal property contained in the Mortgaged premises and used in the operation, rental, or leasing thereof or any part thereof. Mortgagee shall be entitled to collect and receive all earnings, revenues, rents, issues, and profits of the Mortgaged premises or any part thereof (and for such purpose Mortgagor does hereby irrevocably acknowledge that any payment made to Mortgagee hereunder shall be a good

# UNOFFICIAL COPY

receipt and acquittance against Mortgagor to the extent so made) and to apply same to the reduction of the indebtedness hereby secured. The right to enter and take possession of the Mortgaged Premises and use any personal property therein, to manage, operate, and conserve the same, and to collect the rents, issues and profits thereof, shall be in addition to all other rights or remedies of Mortgagee hereunder or afforded by law, and may be exercised concurrently therewith or independently thereof. The expenses concurrently therewith or independently thereof. The expenses (including any receiver's fees, counsel fees, costs and agent's compensation) incurred pursuant to the powers herein contained shall be secured hereby which Mortgagor promises to pay upon demand together with interest at the rate applicable to the Notes at the time such expenses are incurred. Mortgagee shall not be liable to account to Mortgagor for any action taken pursuant hereto other than to account for any rents actually received by Mortgagee. Without taking possession of the Mortgaged Premises, Mortgagee may, in any event the Mortgaged Premises become vacant or are abandoned, take such steps as it deems appropriate to protect and secure the Mortgaged Premises (including hiring watchmen therefor) and all costs incurred in so doing shall constitute so much additional indebtedness hereby secured payable upon demand with interest thereon at the rate applicable to the Notes at the time such costs are incurred.

19. WAIVER OF RIGHT TO REDEEM FROM SALE - WAIVER OF APPRAISEMENT, VALUATION, ETC.. Mortgagor shall not and will not apply for or avail itself of any appraisement, 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 or foreclosure of this Mortgage, but hereby waives the benefit of such laws. Mortgagor for itself and all who may claim through or under it waives any and all right to have the property and estates comprising the Mortgaged Premises marshalled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Mortgaged Premises sold as an entirety. In the event of any sale made under or by virtue of this instrument, the whole of the Mortgaged Premises may be sold in one parcel as an entirety or in separate lots or parcels at the same or different times, all as the Mortgagee may determine. Mortgagee shall have the right to become the purchaser at any sale made under or by virtue of this instrument and Mortgagee so purchasing at any such sale shall have the right to be credited upon the amount of the bid made therefor by Mortgagee with the amount payable to Mortgagee out of the net proceeds of such sale. In the event of any such sale, the Notes and the other indebtedness hereby secured, if not previously due, shall be and become immediately due and payable without demand or notice of any kind. Mortgagor

# UNOFFICIAL COPY

hereby waives any and all rights of redemption from sale under any order or decree of foreclosure pursuant to rights herein granted on behalf of Mortgagor and each and every person acquiring any interest in, or title to, the Mortgaged Premises described herein subsequent to the date of this Mortgage, and on behalf of all other persons to the extent permitted by applicable law.

20. COSTS AND EXPENSES OF FORECLOSURE. In any suit to foreclose the lien hereof there shall be allowed and included as additional indebtedness in the decree for the sale all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for attorney's fees, appraiser's fees, outlays for documentary and expert evidence, stenographic charges, publication costs, and costs (which may be estimated as the items to be expended after the entry of the decree) of procuring all such abstracts of title, title searches and examinations, and guarantee policies. Similar data and assurances with respect to title as Mortgagee may deem to be reasonably necessary either to prosecute any foreclosure action or to evidence to the bidder at any sale pursuant thereto the true condition of the title to or the value of the Mortgaged Premises, all of which expenditures shall become so much additional indebtedness hereby secured which Mortgagor agrees to pay and all of such shall be immediately due and payable with interest thereon from the date of expenditure until paid at the rate applicable to the Notes at the time of expenditure.

21. APPLICATION OF PROCEEDS. The proceeds of any foreclosure sale of the Mortgaged Premises or of any sale of property pursuant to Section 18(b) hereof shall be distributed in the following order of priority: First, on account of all costs and expenses incident to the foreclosure or other proceedings including all such items as are mentioned in Sections 18(b) and 20 hereof; Second, to all other items which under the terms hereof constitute indebtedness hereby secured in addition to that evidenced by the Notes with interest thereon as herein provided; Third, to all principal of and interest on the Notes with any surplus to whomsoever shall be lawfully entitled to same.

22. DEFICIENCY DECREE. If at any foreclosure proceeding the Mortgaged Premises shall be sold for a sum less than the total amount of indebtedness for which judgment is therein given, the judgment creditor shall be entitled to the entry of a deficiency decree against Mortgagor and Mortgagor does hereby irrevocably consent to the appointment of a receiver for the Mortgaged Premises and the property of Mortgagor and of the rents, issues, and profits thereof after such sale and until such deficiency decree is satisfied in full.

23. MORTGAGEE'S REMEDIES CUMULATIVE NO-WAIVER. No remedy or right to Mortgagee shall be exclusive of but shall be

# UNOFFICIAL COPY

cumulative and in addition to every other remedy or right now or hereafter existing at law or in equity or by statute or otherwise. No delay in the exercise of or omission to exercise any remedy or right accruing on any default shall impair any such remedy or right or be construed to be a waiver of any such default or acquiescence therein nor shall it affect any subsequent default of the same or a different nature. Every such remedy or right may be deemed expedient by Mortgagee.

24. MORTGAGEE PARTY TO SUITS. If the Mortgagee shall be made a party to or shall intervene in any action or proceeding affecting the Mortgaged Premises or the title thereto or the interest of Mortgagee under this Mortgage (including probate and bankruptcy proceedings), or if Mortgagee employs an attorney to collect any or all of the indebtedness hereby secured or to enforce any of the terms hereof or realize hereupon or to protect the lien hereof, or if Mortgagee shall incur any costs or expenses in preparation for the commencement of any foreclosure proceedings or for the defense of any threatened suit or proceeding which might affect the Mortgaged Premises or the security hereof, whether or not any such foreclosure or other suit or proceedings shall be actually commenced, then in any such case Mortgagor agrees to pay to Mortgagee, immediately and without demand, all reasonable costs, charges, expenses, and attorney's fees incurred by Mortgagee in any such case, and the same shall constitute so much additional indebtedness hereby secured payable upon demand with interest at the rate per annum applicable to the Notes at the time of expenditure.

25. MODIFICATIONS NOT TO AFFECT LIEN. Mortgagee, without notice to anyone, and without regard to the consideration, if any, paid therefor, or the presence of other liens on the Mortgaged Premises, may in its discretion release any part of the Mortgaged Premises or any person liable for any of the indebtedness hereby secured and may grant waivers or other indulgences with respect hereto and thereto, and may agree with Mortgagor to modifications to the terms and conditions contained herein or otherwise applicable to any of the indebtedness hereby secured (including modifications in the rates of interest applicable thereto), without in any way affecting or impairing the liability of any party liable upon any of the indebtedness hereby secured or the priority of the lien of this Mortgage upon all of the Mortgaged Premises not expressly released, and any party acquiring any direct or indirect interest in the Mortgaged Premises shall take same subject to all of the provisions hereof.

26. NOTICES. All communications provided herein shall be in writing and shall be deemed to have been given when delivered personally or mailed by first class mail, postage prepaid, addressed to the parties hereto at their respective addresses as shown below or to such other and different address as Mortgagor



# UNOFFICIAL COPY

or Mortgagee may designate pursuant to a written notice sent in accordance with the provisions of this Section 26. Copies of any notices shall be sent to the parties hereto as follows:

If to Mortgagor: Shaw, Eisenberg, Floyd & Rothchild  
205 West Wacker Drive  
Chicago, Illinois 60606  
Attention: Mr. Jerald L. Rothchild

with copy to: \_\_\_\_\_  
\_\_\_\_\_

Attention: \_\_\_\_\_

If to Mortgagee: LaSalle Bank Westmont  
139 North Cass Avenue  
Westmont, Illinois 60559  
Attention: Mr. Matthew Tilton

with copy to: Keck, Mahin & Cate  
1515 E. Woodfield Road  
Suite 250  
Schaumburg, Illinois 60173-5431  
Attention: Roger T. Stelle, Esq. or  
William J. Mitchell, Esq.

## 27. ENVIRONMENTAL MATTERS.

a) The Mortgagor hereby represents and warrants to the Mortgagee that neither the Mortgagor nor any of its affiliates or subsidiaries, nor, to the best of Mortgagor's knowledge, 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 (i) the mortgaged Premises or any part thereof, or (ii) any other real property in which the Mortgagor or any of its affiliates or subsidiaries holds any estate or interest whatsoever (including, without limitation, any property owned by a land trust the beneficial interest in which is owned, in whole or in part, by the Mortgagor or any of its affiliates or subsidiaries), and that none of the property described above has ever been used by the Mortgagor, any of Mortgagor's affiliates or subsidiaries, or, to the best of Mortgagor's knowledge, by any other person or entity as a temporary or permanent dump or storage site for any Hazardous Materials expenses and claims of any kind whatsoever (including, without limitation, any losses, liabilities, damages, injuries, costs, expenses, or claims asserted or arising under any of the following (collectively, "Environmental Laws"); the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, any so-called "Superfund" or "Superlien" law, or any other Federal, State or Municipal

# UNOFFICIAL COPY

7 2 0 0 1 9

statute, law, ordinance, code, rule, regulation, order, or decree, now or hereafter in force, regulating, relating to, or imposing liability or standards on conduct concerning any Hazardous Material) paid, incurred, suffered by, or asserted against the Mortgagee as a direct or indirect result of any of the following, regardless of whether or not caused by, or within the control of the Mortgagor, (i) the presence of any Hazardous Materials on or under, or the escape, seepage, leakage, spillage discharge, emission, discharging or release of any Hazardous Material from (A) the Mortgaged Premises or any part thereof, or (B) any or any other real property in which the Mortgagor or any of its affiliates or subsidiaries holds any estate of interest whatsoever, or (ii) any liens against the Mortgaged Premises permitted or imposed by any Environmental Laws, or any actual or asserted liability or obligations of the Mortgagor or any of its affiliates or subsidiaries under any Environmental Laws, or (iii) any actual or asserted liability or obligation of the Mortgagor or any of its affiliates or subsidiaries under any Environmental Law relating to the Mortgaged Premises.

"Hazardous Material" shall, for the purposes hereof, mean any hazardous, toxic, or dangerous waste, substance, or material defined as such in (or for purposes of) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, any so-called "Superfund" or "Superlien" law, or any other Federal, State or Municipal statute, law, ordinance, code, rule, regulation, order, or decree regulating, relating to or imposing liability or standards on conduct concerning any hazardous, toxic or dangerous waste, substance, or material, as now or at any time hereafter in effect.

28. PARTIAL INVALIDITY. All rights, powers, and remedies provided herein are intended to be limited to the extent necessary so that they will not render this Mortgage invalid, unenforceable, or not entitled to be recorded, registered, or filed under any applicable law. If any term of this Mortgage shall be held to be invalid, illegal, or unenforceable, the validity enforceability of the other terms of this Mortgage shall in no way be affected thereby.

29. SUCCESSORS AND ASSIGNS. Whenever any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party; and all covenants, promises, and agreements in this Mortgage contained by or on behalf of Mortgagor, or by or on behalf of Mortgagee, shall bind and inure to the benefit of the respective successors and assigns of such parties, whether so expressed or not.

# UNOFFICIAL COPY

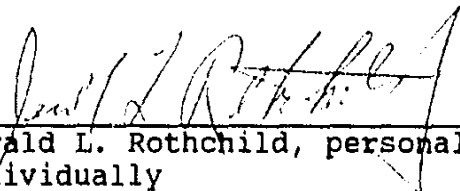
and inure to the benefit of the respective successors and assigns of such parties, whether so expressed or not.


30. HEADINGS. The headings in this instrument are for convenience of reference only and shall not limit or otherwise affect the meaning of any provision hereof.

31. CHANGES, ETC.. This instrument and the provisions hereof may be changed, waived, discharged, or terminated only by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought.

IN WITNESS WHEREOF, Mortgagor has caused these presents to be signed on the day and year first above written.

## MORTGAGORS:

  
\_\_\_\_\_  
Gerald L. Rothchild, personally and individually

  
\_\_\_\_\_  
Barbara E. Rothchild, personally and individually

# UNOFFICIAL COPY

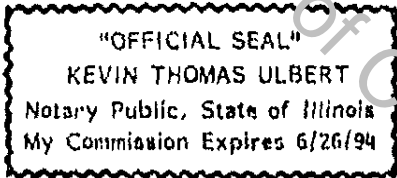
7 7 0 0 2 1 9

STATE OF ILLINOIS )  
COUNTY OF COOK ) SS.

I, Kevin T. Ulbert, a Notary Public, in and for said County, in the State aforesaid, do hereby certify that Jerald L. Rothchild and Barbara E. Rothchild, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free, for the uses and purposes therein set forth.

Given under my hand and official seal this 26 day of November, 1991.

Kevin T. Ulbert  
Notary Public



Property of Cook County Clerk's Office

92009195



# UNOFFICIAL COPY

0 2 0 0 3 1 9

## SCHEDULE I

UNIT NO. 48 IN ARLINGTON HEIGHTS ENCLAVE CONDOMINIUM AS  
DELINEATED ON THE SURVEY OF THE FOLLOWING DESCRIBED REAL ESTATE:

CERTAIN LOTS IN THE ENCLAVE SUBDIVISION OF PART OF THE WEST 1/2  
OF THE SOUTHWEST 1/4 OF SECTION 17 AND PART OF THE EAST 1/2 OF  
THE SOUTHEAST 1/4 OF SECTION 18, TOWNSHIP 42 NORTH, RANGE 11,  
EAST OF THE THIRD PRINCIPAL MERIDIAN, WHICH SURVEY IS ATTACHED AS  
EXHIBIT A TO THE DECLARATION OF CONDOMINIUM RECORDED AS DOCUMENT  
NO. 89521386 AND AS AMENDED FROM TIME TO TIME, TOGETHER WITH AN  
UNDIVIDED PERCENTAGE INTEREST IN THE COMMON ELEMENTS IN COOK  
COUNTY, ILLINOIS.

P.I.N.: 03-17-399-999-1068

020.136

UNOFFICIAL COPY

Property of Cook County Clerk's Office

32009195