

UNOFFICIAL COPY

THIS MORTGAGE IS A FOURTH MORTGAGE

02119185

37 ER

MORTGAGE, ASSIGNMENT OF RENTS & SECURITY AGREEMENT (CHATTEL MORTGAGE) C-1

THIS MORTGAGE ("Security Instrument") is given on April 30, 1992, by Mid Town Bank and Trust Company of Chicago, not personally, but as Trustee ("Trustee") under Trust Agreement dated September 3, 1989 and known as Trust No. 1727; and 825 West Evergreen Building Partnership, an Illinois General Partnership ("Beneficiary" and collectively with Trustee herein referred to as "Mortgagor"). This Security Instrument is given to Mid Town Development Corporation, which is organized and existing under the laws of the State of Illinois, and whose address is 2021 North Clark Street, Chicago, Illinois 60614 ("Lender"). Mortgagor is justly indebted to Lender in the principal sum of Three Hundred Fifteen Thousand Eight Hundred Twenty-Eight and 00/100 (\$315,828.00) Dollars, which indebtedness is evidenced by a certain note dated of even date herewith ("Note"), which Note provides for payments of the indebtedness as set forth below:

Interest

Trustee promises and agrees to pay to Lender interest on the unpaid principal balance evidenced by the Note at the following rate: nine percentage points (9.00%) ("the margin") over the Prime Rate of interest per annum. For purposes of this Note the "Prime Rate" shall mean the prime rate of interest as announced by Lender from time to time. In the event Lender ceases to use the term "Prime Rate" in setting a base rate of interest for commercial loans, then the Prime Rate herein shall be determined by reference to the rate used by Lender as a base rate of interest for commercial loans as the same shall be designated by Lender to Borrower. Furthermore, Borrower acknowledges that the "Prime Rate" is a base reference rate of interest adopted by Lender as a general benchmark from which Lender determines the base rates chargeable on various loans to borrowers with varying degrees of creditworthiness, and Borrower acknowledges and agrees that Lender has made no representation whatsoever that the "Prime Rate" is the interest rate actually offered by Lender to borrowers of any particular creditworthiness.

Interest shall be computed on the basis of a 365-day year and charged for the actual number of days elapsed.

Term

The Note shall be due and payable in full on the maturity date which shall be December 1, 1996 (the "Maturity Date").

Required Payments

Interest on the outstanding principal balance from the date of the Note and installments of principal shall be due and payable monthly beginning June 1, 1993 and on that day of each month thereafter, as provided in the Note, until all of said principal plus any remaining accrued interest and late charges, if any, are repaid in full.

This Security Instrument secures to Lender: (a) the repayment of the debt evidenced by the Note, with interest, and all renewals, extensions and modifications; (b) the payment of all other sums, with interest, advanced under any paragraph herein to protect the security of this Security Instrument; and (c) the performance of Mortgagor's covenants and agreements under this Security Instrument and the Note and all other documents and agreements entered into in connection therewith (the "Loan Documents"). For this purpose, Mortgagor does hereby mortgage, grant and convey to Lender the following described property ("Land") located in Cook County, Illinois:

LOTS 19 TO 30 IN JOHN A. YALES SUBDIVISION OF BLOCK 72 IN ELSTON'S ADDITION TO CHICAGO IN SECTION 5, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PERMANENT INDEX NUMBER: 17-05-225-020-0000

which has the address of 1333 North Kingsbury, Chicago, Illinois 60642 ("Property Address"); which, with the property hereinafter described, is referred to herein as the "Premises",

TOGETHER with all improvements, fixtures and personal property thereto belonging, for so long and during all such times as Mortgagor, its successors or assigns may be entitled thereto (which are pledged primarily and on a parity with said real estate and not secondarily), and all apparatus, equipment or articles now or hereafter therein or thereon used to supply heat, gas, air conditioning, water, light power, refrigeration (whether single units or centrally controlled), and ventilation, including (without restricting the foregoing), screens, window shades, storm doors and windows, floor coverings, inador beds, awnings, stoves and water heaters. All of the foregoing (collectively referred to herein as the "Improvements") are declared to be a part of said real estate whether physically attached thereto or not, and it is agreed that all similar apparatus, equipment, or articles hereafter placed in the Premises by Mortgagor, its successors or assigns shall be considered as constituting part of the real estate.

TOGETHER with all easements, rights of way, gores of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditament and appurtenances whatsoever, in any way now or hereafter belonging, relating or appertaining to the Land, and the reversions, remainders, rents, issues and profits thereof, and all the estate, right, title, interest, property, possession, claim and demand whatsoever, at law as well as in equity, in and to the same;

TOGETHER with all income from the Premises to be applied against the Indebtedness, provided, however, that Mortgagor may, so long as no Default has occurred hereunder, collect income and other benefits as it becomes due, but not more than one (1) month in advance thereof;

AMER-90-174

02119185

# UNOFFICIAL COPY

TOGETHER WITH ALL PROCEEDS OF THE FOREGOING, INCLUDING WITHOUT LIMITATION ALL JUDGMENTS, awards of damages and settlements hereafter made resulting from condemnation proceeds or the taking of the premises or any portion thereof under the power of eminent domain, any proceeds of option or contract to sell the premises or any portion thereof.

**TO HAVE AND TO HOLD** the premises, unto the lender, its successors and assigns, forever, for the purposes herein set forth together with all right to possession of the premises after the occurrence of any default as hereinafter defined, the mortgagor hereby RELINQUISHING AND WAIVING ALL rights under and by virtue of the homestead exemption laws of the State of Illinois.

**MORTGAGOR COVENANTS** that it is lawfully seized of the premises, and that it has lawful authority to mortgage the same, and that it will warrant and defend the premises and the quiet and peaceful possession of the same against the lawful claims of all persons whomsoever.

**PROVIDED, HOWEVER,** that if mortgagor shall pay in full when due the indebtedness and shall timely perform and observe all of the provisions herein and in the Note provided to be performed and observed by the mortgagor, then this security instrument and the interest of lender in the premises shall cease and become void, but shall otherwise remain in full force.

**IT IS FURTHER UNDERSTOOD AND AGREED THAT:**

1. promptly repair, restore or rebuild any buildings or improvements now or hereafter on the premises which may become damaged or be destroyed;
2. keep all premises in good condition and repair, without waste, and free from mechanic's or other liens or claims for lien not expressly subordinated to the lien hereof;
3. pay when due any indebtedness which may be secured by a lien or charge on the premises superior to the lien hereof, and upon request exhibit satisfactory evidence of the discharge of such prior lien to the holder of the Note;
4. complete within a reasonable time any building or buildings now or at any time in process of erection upon said premises, or at lender's election, within the time period set forth in any other loan document;
5. comply with all requirements of law or municipal ordinances with respect to the premises and the use thereof;
6. refrain from any action and correct any condition which would increase the risk of fire or other hazard to the improvements;
7. comply with any restrictions of record with respect to the premises, and comply with any conditions necessary to preserve and extend all rights that are applicable to the premises; and
8. cause the premises to be managed in a competent manner. Without the prior written consent of lender, mortgagor shall not cause, suffer, or permit any material alterations of the premises except as required by law or except as permitted or required to be made by the terms of any lease approved by lender;
- b. change in the intended use of the premises;
- c. change in the identity of the person or firm responsible for managing the premises;
- d. zoning reclassification with respect to the premises;
- e. unlawful use of, or nuisance to, the premises; or
- f. granting of any easements, licenses, covenants, conditions or declarations of use against the premises, other than use restrictions contained or provided for in leases approved by lender.

**B. TAXES**

1. mortgagor 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 (collectively "Taxes"), when due, and shall, upon written request, furnish to lender, its successors or assigns, duplicate receipts therefor.
2. mortgagor may, in good faith and with reasonable diligence, contest the validity or amount of any such taxes, provided:
  - a. such contest shall prevent the collection of the taxes so contested and the sale or foreclosure of the premises or any part thereof or interest therein to satisfy the same;
  - b. mortgagor has notified lender in writing of the intention of mortgagor to contest the same before any tax has been increased by any interest, penalty, or costs, and mortgagor has deposited with lender, at such place as lender may from time to time in writing designate, a sum of money or other security acceptable to lender that, when added to the monies or other security, if any, deposited with lender pursuant to Section 4 hereof, is sufficient, in lender's judgment, to pay in full such contested tax, including interest and penalties, and shall increase such deposit to cover additional interest and penalties whenever lender deems such an increase advisable.

If mortgagor fails to prosecute such contest with reasonable diligence or fails to maintain sufficient funds on deposit as hereinabove provided, lender may, at its option, apply the monies and liquidate any securities deposited with lender, in payment of, or on account of, such taxes, or any portion thereof then unpaid, including all penalties and interest thereon. If the amount of the money and any such security so deposited is insufficient for the payment in full of such taxes, together with all penalties and interest thereon, mortgagor shall forthwith, upon demand, either deposit with lender a sum that, when added to such funds then on deposit, is sufficient to make such payment in full, or, if lender has applied funds on deposit on account of such taxes, restore such deposit to an amount satisfactory to lender. Provided that mortgagor is not then in default hereunder, lender shall, upon mortgagor's written request, after final disposition of such contest and upon mortgagor's delivery to lender of an official bill for such taxes, apply the money so deposited in full payment of such taxes or that part thereof then unpaid, together with penalties and interest thereon.

**C. INSURANCE COVERAGE.** Mortgagor will insure the premises against such perils and hazards, and in such amounts and with such limits, as lender may from time to time require, and in any event will continuously maintain the following described policies of insurance (the "insurance policies"):

00000619181

- a. Casualty insurance against loss and damage by all risks of physical loss or damage, including fire, windstorm, flood, earthquake and other risks covered by the so-called extended coverage endorsement in amounts not less than the full insurable replacement value of all improvements, fixtures and equipment from time to time on the Premises and bearing a replacement cost agreed amount endorsement;
- b. Comprehensive public liability against death, bodily injury and property damage with such limits as Lender may require;
- c. Rental or business interruption insurance in amounts sufficient to pay, for a period of up to one (1) year, all amounts required to be paid by Mortgagor pursuant to the Note and this Security Instrument, if applicable;
- d. Steam boiler, machinery and pressurized vessel insurance, if applicable;
- e. If the Federal Insurance Administration (FIA) has designated the Premises to be in a special flood hazard area and designated the community in which the Premises are located eligible for sale of subsidized insurance, first and second layer flood insurance when and as available; and
- f. The types and amounts of coverage as are customarily maintained by owners or operators of like properties.

**D. Insurance Policies.** All Insurance Policies shall be in form, companies and amounts reasonably satisfactory to Lender. All Insurance Policies shall:

1. include, when available, non-contributing mortgage endorsements in favor of and with loss payable to Lender,
2. include standard waiver of subrogation endorsements,
3. provide that the coverage shall not be terminated or materially modified without thirty (30) days' advance written notice to Lender and
4. provide that no claims shall be paid thereunder without ten (10) days' advance written notice to Lender. Mortgagor will deliver all Insurance Policies premium prepaid, to Lender and will deliver renewal or replacement policies at least thirty (30) days prior to the date of expiration of any policy.

**E. Defaults and Acceleration**

1. Mortgagor shall pay each item of indebtedness herein mentioned, both principal and/or interest, when due according to the terms hereof. At the option of the holders of the Note and without notice to Mortgagor, all unpaid indebtedness secured by this Security Instrument shall, notwithstanding anything in the Note or in this Security Instrument to the contrary, become due and payable:
  - a. within fifteen (15) days in the case of default in making payment of any installment of principal or interest on the Note, or
  - b. when default shall occur and continue for fifteen (15) days following the date of mailing of written notice of such default to Mortgagor in the performance of any other agreement of the Mortgagor herein contained, said option to be exercised at any time after the expiration of said fifteen day period, or
  - c. in the event Mortgagor or any other obligor default under any other document given by any of them to secure the obligations hereby secured or under the loan commitment of Lender and any and all revisions, modifications, and extensions thereto (the "Loan Commitment"), the provisions of which are incorporated herein by reference, which default continues beyond any applicable notice and grace period provided therein, or
  - d. if Trustee, Beneficiary or any guarantor of the Note ("Guarantor") makes an assignment for their benefit of their creditors, admits in writing their inability to pay debts as they come due, files a petition for bankruptcy or is adjudicated bankrupt, insolvent, or files a petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under present or future statute, law or regulation, or
  - e. in the event of any change in the financial condition of Trustee, Beneficiary or Guarantor subsequent to the date hereof, which in Lender's sole discretion is material or adverse, or
  - f. if any untrue statement or representation made by Trustee, Beneficiary or Guarantor to Lender shall be discovered by Lender (the foregoing events together with any other Default specified in this Security Agreement are herein referred to as "Defaults").
2. Notwithstanding anything in the Note or Security Instrument to the contrary, the death of all individual Guarantors of the indebtedness herein mentioned shall be a Default in the performance of an agreement of the Mortgagor hereunder and the holder of the Note shall be entitled to all rights and remedies given in the Security Instrument in the event of Default in the performance of any agreement of the Mortgagor contained therein.
3. In the event that the holder of the Note shall, in good faith, deem itself insecure, the holder of the Note shall have the right to declare the loan evidenced by the Note to be in default and to accelerate the installments of principal and/or interest due hereunder.

**F. Foreclosure**

1. When indebtedness hereby secured shall become due whether by acceleration or otherwise, holders of the Note shall have the right to foreclose the lien hereof in accordance with the Illinois Mortgage Foreclosure Act, Illinois Revised Statute chapter 110, paragraph 15-1101, et. seq. (1987) (the "Act"). 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, its successor or assigns for 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) 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 Lender, its successor or assigns may deem to be 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 shall become so much additional indebtedness secured hereby and immediately due and payable, with interest thereon at a rate equivalent to the post maturity rate set forth in the Note secured by this Security Instrument, if any, otherwise the prematurity rate set forth therein, when paid or incurred by Lender, its successor or assigns in connection with:

# UNOFFICIAL COPY

any proceeding, including probate and bankruptcy proceedings, to which any of them shall be a party, either as plaintiff, claimant or defendant, by reason of this Security Instrument or any indebtedness hereby secured; or

b. preparations for the commencement of any suit for the foreclosure hereof after accrual of such right to foreclosure whether or not actually commenced; or

c. preparations for the defense of any suit for the foreclosure hereof after accrual of such right to foreclosure whether or not actually commenced; or

d. preparations for the defense of any threatened suit or proceeding which might affect the premises or the security hereof, whether or not actually commenced.

2. 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 thereof; second, all other items which under the terms hereof constitute secured indebtedness additional to that evidenced by the Note, with interest thereon as hereinafter provided; third, all interest remaining unpaid on the Note; fourth, all principal remaining unpaid on the Note; fifth, any overplus to mortgagee, their heirs, legal representatives or assigns, as their rights may appear.

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

g. Appointment of Receiver. Upon, or at any time after the filing of a bill to foreclose this Security Instrument, the court in which such bill is filed may appoint a receiver of said premises. Such appointment may be made either before or after sale, without notice to the receiver and without regard to the value of the premises or whether the same shall be then occupied as a homestead or not and lender, its successor or assigns hereunder 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 mortgagee, 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:

1. the indebtedness secured hereby, or by any decree foreclosing this Security Instrument, or any tax, special assessment or other lien which may be or become superior to the lien hereof or such decree, provided such application is made prior to foreclosure sale; or

2. the deficiency in case of a sale and deficiency.

h. Payments and Advances by Lender After Default

1. In case of default therein, Lender, its successor or assigns may, but need not, make any payment or perform any act hereinafter required of mortgagee in any form and manner deemed expedient, and may, but need not, make full or partial payments of principal or interest on prior encumbrances, it and its successors, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale or foreclosure affecting said premises or contract any tax or assessment. All moneys paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including attorney's fees, and any other moneys advanced by Lender, its successor or assigns to protect the mortgagee's 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 equivalent to the post maturity rate set forth in the Note secured by this Security Instrument, if any, otherwise at the pre-maturity rate set forth in the Note. Inaction of Lender, its successor or assigns shall never be considered as a waiver of any right accruing to them on account of any default hereunder on the part of mortgagee.

2. The Lender, its successor or assigns making any payment hereby authorized 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, item or title or claim thereof.

i. Lender's Right of Inspection. Lender, its successors or assigns shall have the right to inspect the premises at all reasonable times and access thereto shall be permitted for that purpose.

4. Deposits of Taxes and Insurance Premiums. To the full extent permitted by law, to further secure the payment of said principal sum of money and interest thereon, mortgagee agrees to deposit with the holders of the Note each and every month, commencing on the first payment date, until the indebtedness hereby secured shall have been fully paid, an amount equal to one-twelfth of 1% of the annual real estate taxes, special assessment levies and property insurance premiums (hereinafter referred to as "funds"). Said funds shall be held by the holders of the Note in accordance with the terms and provisions of this paragraph without any allowance of interest, and may be applied by said holders toward payment of taxes, special assessment levies and insurance premiums when due, but the holders of the Note shall be under no obligation to ascertain the correctness of or to obtain the tax, special assessment levies or insurance bills, or attend to the payment thereof. If the funds so deposited exceed the amount required to pay such taxes, assessment (general and special), and/or insurance premiums for any year, the excess shall be applied on a subsequent deposit or deposits. Mortgagee acknowledges that the sums so deposited shall create a debtor-creditor relationship only and shall not be considered to be held by the holders of the Note in trust and that the holders of the Note shall not be considered to have consented to act as the mortgagee's agent for the payment of such taxes, levies and premiums. In the event of a default in any of the provisions of the Note may at their option, without being required to do so, apply any moneys at the time of deposit on any of the mortgagee's obligations hereon or in the Note contained in such order and manner as the holders of the Note may elect. When the indebtedness secured hereby has been fully paid, any remaining deposits shall be paid to mortgagee or to the then owner or owners of the mortgaged premises.

5815733

## K. Restrictions on Transfer.

1. In determining whether or not to make the loan secured hereby, Lender examined the credit-worthiness of Mortgagor and/or Mortgagor's beneficiary or guarantors (if applicable), found the same to be acceptable and relied and continues to rely upon same as the means of repayment of the loan. Lender also evaluated the background and experience of Mortgagor and/or its beneficiary or guarantor (if applicable) in owning and operating property such as the Premises, found the same to be acceptable and relied and continues to rely upon same as the means of maintaining the value of the Premises which is Lender's security for the loan. It is recognized that Lender is entitled to keep its own portfolio at current interest rates by either making new loans at such rates or collecting assumption fees and/or increasing the interest rate on a loan the security for which is purchased by a party other than the original Mortgagor and/or its beneficiary (if applicable). Mortgagor and/or its beneficiary (if applicable) further recognize that any secondary or junior financing placed upon the Premises, or the beneficial interest of beneficiary in Mortgagor:
  - a. may divert funds which would otherwise be used to pay the Note secured hereby;
  - b. could result in acceleration and foreclosure by any such junior encumbrancer which would force Lender to take measures and incur expenses to protect its security;
  - c. would detract from the value of the Premises should Lender come into possession thereof with the intention of selling same; and
  - d. impair Lender's right to accept a deed in lieu of foreclosure, as a foreclosure by Lender would be necessary to clear the title of the Premises.
2. In accordance with the foregoing and for the purposes of:
  - a. protecting Lender's security, both of repayment of the indebtedness and of value of the Premises;
  - b. giving Lender the full benefit of its bargain and contract with Mortgagor and/or beneficiary (if applicable) and Mortgagor;
  - c. allowing Lender to raise the interest rate and/or collect assumption fees; and
  - d. keeping the Premises and the beneficial interest (if applicable) free of subordinate financing liens, beneficiary (if appropriate) and Mortgagor agree that if this Paragraph be deemed a restraint on alienation, that it is a reasonable one and that any direct or indirect sale, conveyance, assignment, further encumbrance or other transfer of title to the Premises or any interest therein (whether voluntary or by operation of law) without the Lender's prior written consent shall be an event of Default hereunder. For the purpose of, and without limiting the generality of, the preceding sentence, the occurrence at any time of any of the following events shall be deemed to be an unpermitted transfer of title to the Premises and therefore an event of Default hereunder:
    - (1) any sale, conveyance, assignment or other transfer of, or the grant of a security interest in, all or any part of the title to the Premises or the beneficial interest or power of direction under the trust agreement with the Mortgagor, if applicable;
    - (2) any sale, conveyance, assignment or other transfer of, or the grant of a security interest in, any share of stock of the Mortgagor (if a corporation) or the corporation which is the beneficiary or one of the beneficiaries under the trust agreement with the Mortgagor, or of any corporation directly or indirectly controlling such beneficiary corporation;
    - (3) any sale, conveyance, assignment or other transfer of, or the grant of a security interest in, any general partnership interest of the limited partnership or general partnership (herein called the "Partnership") which is the Mortgagor or the beneficiary or one of the beneficiaries under the trust agreement with the Mortgagor;
    - (4) any sale, conveyance, assignment or other transfer of, or the grant of a security interest in, any share of stock of any corporation directly or indirectly controlling such Partnership.

Any consent by the Lender, or any waiver of an event of Default, under this Paragraph shall not constitute a consent to, or waiver of any right, remedy or power of Lender upon a subsequent event of Default under this Paragraph. Any consent may be granted or withheld at Lender's sole and absolute discretion.

## L. Assignment of Rents

1. To further secure the indebtedness secured hereby, Mortgagor does hereby sell, assign and transfer unto the Lender all the rents, issues and profits now due and which may hereafter become due under or by virtue of any lease, whether written or verbal, or any letting of, or of any agreement for the use or occupancy of the Premises or any part hereof, which may have been heretofore or may be hereafter made or agreed to or which may be made or agreed to by the Lender under the powers herein granted, it being the intention hereby to establish an absolute transfer and assignment of all of such leases and agreements, and all the avails thereunder, unto the Lender, and Mortgagor does hereby appoint irrevocably the Lender its true and lawful attorney in its name and stead (with or without taking possession of the Premises) to rent, lease or let all or any portion of the Premises to any part or parties at such rental and upon such terms as said Lender shall, in its discretion, determine, and to collect all of said avails, rents, issues and profits arising from or accruing at any time hereafter, existing on the Premises, with the same rights and powers and subject to the same immunities, exoneration of liability and rights of recourse and indemnity as the Lender would have upon taking possession of the Premises.
2. The Mortgagor represents and agrees that no rent has been or will be paid by any person in possession of any portion of the Premises for more than two installments in advance, and that the payment of none of the rents to accrue for any portion of the Premises has been or will be waived, released, reduced, discounted, or otherwise discharged or compromised by the Mortgagor. The Mortgagor waives any rights or set off against any person in possession of any portion of the Premises. Mortgagor agrees that it will not assign any of the rents or profits of the Premises, except to a purchaser or grantee of the Premises.
3. Nothing herein contained shall be construed as constituting the Lender as a mortgagee in possession in the absence of taking of actual possession of the Premises by the Lender. In the exercise of the powers herein granted the Lender, no liability shall be asserted or enforced against the Lender, all such liability being expressly waived and released by Lender.

# UNOFFICIAL COPY

9. This security instrument shall be construed under Illinois law. If any provisions hereof are invalid under Illinois law, such invalidity shall not affect the validity of the rest of the Security Instrument and Rider, if any.

10. Mortgagor agrees that it will not at any time or in any manner whatsoever take any advantage or extension of law or any so-called "Mortgage Law" now or at any time hereafter in force, nor take any advantage of any law now or hereafter in force providing for the valuation or appraisal of the premises, or any part thereof, prior to any sale thereof to be made pursuant to any provisions herein contained, or to any decree, judgment or order of any court of competent jurisdiction; or after such sale claim or exercise any rights under any statute now or hereafter in force to redeem the property sold, or any part thereof, or relating to the marshaling thereof, upon foreclosure sale or other enforcement hereof. To the full extent permitted by law, Mortgagor hereby expressly waives any and all rights of redemption under the Act, on its own behalf, on behalf of all persons claiming or having an interest (direct or indirect) by, through or under Mortgagor and on behalf of each and every person acquiring any interest in or title to the premises subsequent to the date hereof, it being the intent hereof that any and all such rights of redemption of Mortgagor and such other persons, are and shall be deemed to be hereby waived to the full extent permitted by applicable law. To the full extent permitted by law, Mortgagor agrees that it will not, by invoking or utilizing any applicable law or laws or otherwise, hinder, delay or impede the exercise of any right, power or remedy herein or otherwise granted or delegated to Lender, but will permit the exercise of every such right, power and remedy as though no such law or laws have been or will have been made or enacted. To the full extent permitted by law, Mortgagor hereby agrees that no action for the enforcement of the lien or any provision hereof shall be subject to any defense which would not be good and valid in an action at law upon the Note. Mortgagor expressly waives the covenant of good faith and fair dealing and the requirement of commercial reasonableness. Mortgagor acknowledges that the premises do not constitute agricultural real estate as defined in Section 15-1201 of the Act or residential real estate as defined in Section 15-1219 of the Act.

11. Mortgagor agrees that it will not at any time or in any manner whatsoever take any advantage or extension of law or any so-called "Mortgage Law" now or at any time hereafter in force, nor take any advantage of any law now or hereafter in force providing for the valuation or appraisal of the premises, or any part thereof, prior to any sale thereof to be made pursuant to any provisions herein contained, or to any decree, judgment or order of any court of competent jurisdiction; or after such sale claim or exercise any rights under any statute now or hereafter in force to redeem the property sold, or any part thereof, or relating to the marshaling thereof, upon foreclosure sale or other enforcement hereof. To the full extent permitted by law, Mortgagor hereby expressly waives any and all rights of redemption under the Act, on its own behalf, on behalf of all persons claiming or having an interest (direct or indirect) by, through or under Mortgagor and on behalf of each and every person acquiring any interest in or title to the premises subsequent to the date hereof, it being the intent hereof that any and all such rights of redemption of Mortgagor and such other persons, are and shall be deemed to be hereby waived to the full extent permitted by applicable law. To the full extent permitted by law, Mortgagor agrees that it will not, by invoking or utilizing any applicable law or laws or otherwise, hinder, delay or impede the exercise of any right, power or remedy herein or otherwise granted or delegated to Lender, but will permit the exercise of every such right, power and remedy as though no such law or laws have been or will have been made or enacted. To the full extent permitted by law, Mortgagor hereby agrees that no action for the enforcement of the lien or any provision hereof shall be subject to any defense which would not be good and valid in an action at law upon the Note. Mortgagor expressly waives the covenant of good faith and fair dealing and the requirement of commercial reasonableness. Mortgagor acknowledges that the premises do not constitute agricultural real estate as defined in Section 15-1201 of the Act or residential real estate as defined in Section 15-1219 of the Act.

12. Mortgagor represents that it is currently in compliance with, and covenants and agrees that, it will manage and operate the premises and will cause each tenant to occupy its leased portion of the premises in compliance with, all federal, state and local laws, rules, regulations and ordinances relating to the use, generation, storage, handling or disposal of hazardous or toxic substances or other materials (including, without limitation, air pollution, soil and water pollution, and the use, generation, storage, handling or disposal of hazardous or toxic substances or other materials (including, without limitation, raw materials, products, supplies or wastes)). Mortgagor further covenants and agrees that it shall not install or permit to be installed in the premises asbestos or any substance containing asbestos and deemed hazardous by or in violation of federal, state or local laws, rules, regulations or orders regarding such material. Mortgagor shall send to Lender within five (5) days of receipt or completion thereof, any report, citation, notice or other writing including, without limitation, hazardous waste disposal manifests, by, to or from any governmental or quasi-governmental authority empowered to regulate or oversee any of the foregoing activities. Mortgagor shall remove from the premises and dispose of any such hazardous or toxic substances or other materials in a manner consistent with and in compliance with applicable laws, rules, regulations and ordinances and shall take any and all other action to remedy, rectify, rehabilitate and correct any violation of any applicable law, rule, regulation or ordinance concerning toxic or hazardous substances or any violation of any agreement entered into between Mortgagor, Lender and/or any third party with respect to hazardous or toxic materials. Mortgagor agrees to indemnify, defend with counsel reasonably acceptable to Lender (at Mortgagor's sole cost) and hold Lender harmless against any claim, response or other costs, damages, liability or demand (including without limitation by Mortgagor or any of the foregoing laws, regulations or ordinances or breach of any of the foregoing covenants or agreements). The foregoing indemnity shall survive repayment of the indebtedness.

58161700

10

11

12

- (b) any award in eminent domain proceedings for taking or for loss of value, or
- (c) the debtor's interest as lessor in any present or future lease or rights to income growing out of the use and/or occupancy of the property mortgaged hereby, whether pursuant to lease or otherwise, which shall never be construed as in anyway altering any of the rights of Lender as determined by this instrument or impugning the priority of the Lender's lien granted or by any other recorded document, but such mention in the Financing Statement is declared to be for the protection of the Security Instrument in the event any court or judge shall at any time hold with respect to (a), (b) and (c) that notice of Lender's priority of interest to be effective against a particular class of persons, including, but not limited to, the Federal Government and any subdivisions or entity of the Federal Government, must be filed in the Commercial Code records.

2. Notwithstanding the aforesaid, the Mortgagor covenants and agrees that so long as any balance remains unpaid on the Note, it will execute (or cause to be executed) and deliver to Lender, such renewal certificates, affidavits, extension statements or other documentation in proper form so as to keep perfected the lien created by any Security Agreement and Financing Statement given to Lender by Mortgagor, and to keep and maintain the same in full force and effect until the entire principal indebtedness and all interest to accrue thereunder has been paid in full.

T. Prior Trust Deed and Mortgage: The Premises subject hereto are subject to a Prior Trust Deed (the "Prior Trust Deed") filed with the Recorder of Deeds of Cook County, Illinois as document number 89525818 and made by Mid Town Bank and Trust Company of Chicago a/t/u Trust Agreement dated 2/5/89 a/k/a Trust #1727 to secure a note in the amount of \$3,781,000.00 and two Prior Mortgages (the "Prior Mortgages") of even date herewith, in the respective amounts of \$746,000.00 and \$979,840.23, made by Mid Town Bank and Trust Company of Chicago a/t/u Trust Agreement dated 9/5/89 a/k/a Trust #1727, on the property commonly known as 1333 North Kingsbury, Chicago, Illinois. Any default under the Prior Trust Deed and the Prior Mortgages, and any and all of their modifications thereof, shall be considered a Default hereunder which default notwithstanding anything contained to the contrary herein or contained in the Note which this Security Instrument secures, shall have the same grace period, if any, for curing defaults as set forth in the Prior Trust Deed and Prior Mortgages. This Security Instrument is subordinate and junior to the Prior Trust Deed and Prior Mortgages.

U. Other Security Instruments: The Note secured hereunder is also secured by a Collateral Assignment of Partnership Interests, including all required consents, of Howard J. Weiner, dated of even date ("Partnership Assignment") and by other mortgages (collectively the "Other Mortgages") dated of even date herewith, and filed with the Recorder of Deeds of Cook County, Illinois, on the real estate commonly known as 2014 North Dayton, Chicago, Illinois, made by Howard J. Weiner and Helene M. Weiner, his wife and 4102-24 North Kenmore, Chicago, Illinois, made by Devon Bank a/t/u Trust Agreement dated 12/30/86 a/k/a Trust #5300, and Daniel Drew and J. Michael Drew, both to Lender. The Partnership Assignment, the Other Mortgages, and the other documents securing and relating to the loan secured hereby, shall be referred to collectively as the "Other Security Instruments". Any default under the Other Security Instruments or under Note A, Note B and Note C, from Trustee to Lender in the amounts of \$746,000.00, \$979,840.23 and \$484,740.77 respectively, or the documents securing or relating to such notes, which continues after any applicable notice and grace shall constitute a Default hereunder.

93319185

V. Trustee Exculpatory: In the event the Mortgagor executing this Security Instrument is an Illinois land trust, this Security Instrument is executed by Trustee, not personally but as trustee aforesaid in the exercise of the power and authority conferred upon and vested in it as such Trustee. No personal liability shall be asserted or be enforceable against Trustee, because or in respect of this or the making, issue or transfer thereof, all such liability, if any, being expressly waived by each taker and holder of the Note, but nothing herein contained shall modify or discharge the personal liability of Beneficiary, any co-maker of the Note or any guarantor, if any, and each original and successive holder of the Note accepts the same upon the express condition that no duty shall rest upon Trustee to sequester the rents, issues and profits arising from the property described in this Security Instrument or the proceeds arising from the sale or other disposition thereof.

IN WITNESS WHEREOF, the Mortgagor has executed this instrument as of the day and year first above written.

TRUSTEE:

Mid Town Bank and Trust Company of Chicago not personally, but solely as Trustee aforesaid:

By: Deborah Stephanides  
Deborah Stephanides, Trust Officer

Attest: Jill E. Bishop  
Jill E. Bishop, Assistant Secretary

BENEFICIARY:

825 West Evergreen Building Partnership, an Illinois General Partnership:

By: Howard Weiner  
Howard Weiner, General Partner

By: Drew Development, Inc., General Partner

By: Daniel Drew, President

Attest: J. Michael Draw, Secretary

Mail To:

THIS INSTRUMENT WAS PREPARED BY:  
Jill E. Bishop  
MID TOWN DEVELOPMENT CORPORATION  
2021 NORTH CLARK STREET  
CHICAGO, ILLINOIS 60614

# UNOFFICIAL COPY

9-19185

At all times, regardless of whether any loan proceeds have been disbursed, this security instrument secures as part of the indebtedness hereby secured the payment of any and all loan commissions, service charges, liquidated damages, attorneys' fees, expenses and advances due to or incurred by lender, its successors or assigns in accordance with the note, this security instrument and the said loan commitment (collectively "expenses"). provided, however, that anything contained herein not to the contrary in no event shall plus any additional charges, exceed 50% of the face amount of the Note.

2. Lender, its successors or assigns shall release this security instrument and the lien thereof by proper instrument upon presentation of satisfactory evidence that all indebtedness secured by this security instrument has been fully paid.

3. This security instrument and all provisions hereof, shall extend to and be binding upon Mortgagor and all persons claiming under or through Mortgagor, and the word "Mortgagor" when used herein shall include all such persons and all persons liable for the payment of the indebtedness or any part hereof, whether or not such persons shall have executed the Note or this Security Instrument. The word "Note" when used in this instrument shall be construed to mean "Notes" when more than one note is used.

4. Mortgagor and Lender acknowledge and agree that in no event shall Lender be deemed to be a partner or joint venturer with Mortgagor or any beneficiary of Mortgagor. Without limitation of the foregoing, Lender shall not be deemed to be such a partner or joint venturer on account of its becoming a mortgagee in possession or exercising any rights pursuant to this Security Instrument or pursuant to any other instrument or document evidencing or securing any of the indebtedness secured hereby, or otherwise.

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

6. Any notice which any party hereto may desire or may be required to give to any other party hereto shall be in writing, and shall be deemed given if and when personally delivered, or on the second business day after being deposited in United States registered or certified mail, postage prepaid, addressed to a party at its address set forth below, or at such other place as such party may have designated to all other parties by notice in accordance herewith:

(a) If to Lender: Mid Town Development Corporation, Joel F. Zeman, Director, 2021 North Clark Street, Chicago, Illinois, 60614, with a copy to Altheimer & Gray, Robert Berger, 10 South Wacker Drive Chicago, Illinois, 60606; and

(b) If to Trustee or Beneficiary: Mid Town Bank and Trust Company of Chicago, Deborah Stephanides, Trust Officer, 2021 North Clark Street, Chicago, Illinois, 60614 with a copy to 825 West Morgan Building Partnership, c/o Howard Wehner, 1777 North Clybourn, Chicago, Illinois, 60614

7. Future Advances. This security instrument is given to secure a non-revolving credit loan and shall secure not only the existing indebtedness, but also such future advances, whether such advances are obligatory or to be made at the option of the lender, or otherwise, as are made within twenty years from the date hereof, to the same extent as if such future advances were made on the date of execution of this security instrument, and although there may be no made at the time of execution of this security instrument, although there may be no indebtedness outstanding at the time any advance is made. The total amount of indebtedness that is secured hereby may increase or decrease from time to time, but, subject to paragraph P-1, the total unpaid balance so secured at any one time shall not exceed a maximum principal amount of the Note, plus interest thereon, expenses, and any disbursements made for the payment of taxes, special assessments, or insurance on the premises, with interest on such disbursements (all such indebtedness being hereinafter referred to as the "maximum amount secured hereby"). This Security Instrument is intended to and shall be valid and have priority over all subsequent liens and encumbrances including statutory liens, excepting therefrom solely taxes and assessments levied on the premises, to the extent of the maximum amount secured hereby.

8. Business Loan. The proceeds of the loan secured by this security instrument will be used for the purpose specified in Paragraph 6404 (1)(c) of Chapter 11 of the Illinois Revised Statutes (1981); the loan secured hereby constitutes a business loan within the meaning of said section and that, accordingly, the loan secured hereby is exempt from the Illinois usury requirements.

9. Security Agreement

1. This Security Instrument shall be deemed a security agreement as defined in the Illinois Commercial Code. This Security Instrument creates a security interest in favor of Lender in all property including all personal property, fixtures and goods affecting property either referred to or described herein or in anyway connected with the use or enjoyment of the premises. The remedies for any violation of the covenants, terms and conditions of the agreements herein contained shall be:

a. as prescribed herein, or

b. by general law, or

c. as to such part of the security which is also reflected in any financing statement filed to perfect the security interest herein created, by the specific statutory consequences now or hereinafter enacted and specified in the Illinois Commercial Code, all at Lender's sole election. Mortgagor and Lender agree that the filing of such a financing statement in the records normally having to do with personal property shall never be construed as in anyway derogating from or impairing this declaration and the hereby stated intention of the parties hereto, that everything used in connection with the production of income from the premises and/or adapted for use therein and/or which is described or referred to in this Security Instrument is, and at all times and for all purposes and in all proceedings both legal or equitable shall be, regarded as part of the real estate irrespective of whether any such items are physically attached to the improvements.

(2) Serial numbers are used for the better identification of certain equipment items capable of being thus identified in a recital contained herein or in any list filed with the Lender, or

(3) Any such item is referred to or reflected in any such financing statement of (a) the right in or the proceeds of any fire and/or hazard insurance policy, or



# UNOFFICIAL COPY

STATE OF ILLINOIS )  
 )  
COUNTY OF COOK )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that Deborah Stephanites, Trust Officer of Mid Town Bank and Trust Company of Chicago, an Illinois corporation, and Jill E. Bishop, Assistant Secretary of said Illinois corporation, personally known to me to be the same persons whose names are subscribed to the foregoing instrument in their stated capacities, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary acts, and as the free and voluntary acts of said corporation, for the uses and purposes therein set forth; and the Assistant Secretary did also then and there acknowledge that she, as custodian of the corporate seal of said corporation, did affix said corporate seal to said instrument as her own free and voluntary act, and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 30th day of April, 1993.

*Leslie J. Marshall*  
Notary Public

My commission expires:



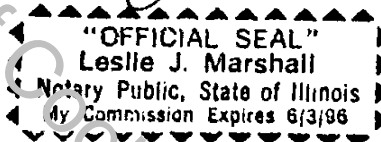
STATE OF ILLINOIS )  
 )  
COUNTY OF COOK )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that Howard Weiner, General Partner, Daniel Drew, President, and J. Michael Drew, Secretary of Drew Development, Inc., as General Partners of 825 West Evergreen Building Partnership, an Illinois General Partnership are 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 acts, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 30th day of April, 1993.

*Leslie J. Marshall*  
Notary Public

My commission expires:



COOK COUNTY, ILLINOIS  
FILED FOR RECORD

93 JUN -3 PM 12:30

93419185

UNOFFICIAL COPY

Property of Cook County Clerk's Office

187777