

UNOFFICIAL COPY

93148571

MORTGAGE AND SECURITY AGREEMENT

93148571

THIS MORTGAGE AND SECURITY AGREEMENT (hereinafter referred to as the "Mortgage"), dated and effective as of the 12th day of January, 1993 by MIDWEST BANK AND TRUST COMPANY, as Trustee under Trust Created August 13, 1982, and known as Trust Number 82-08-3917 (hereinafter collectively referred to as "Mortgagor"), in favor of NORTHLAKE BANK, with its principal place of business located at 26 W. North Avenue, Northlake, Illinois (hereinafter referred to as "Mortgagee"), has reference to the following facts and circumstances:

MORTGAGOR is obligated and indebted to Mortgagee for loans, advances, extensions of credit or other financial accommodations evidenced by that certain Note dated as of January ____, 1993, in the original principal amount of \$121,732.81 (the "Note"), executed and delivered to Mortgagee by Mortgagor;

NOW THEREFORE, in order to secure payment of "Mortgagor's Liabilities" (as hereinafter defined) and in consideration of the Loan and any other financial accommodations at any time made by Mortgagee to or for the benefit of Mortgagor, Mortgagor agrees with Mortgagee as follows:

1. DEFINITIONS AND TERMS

1.1 The following words, terms and/or phrases shall have the meanings set forth thereafter and such meanings shall be applicable to the singular and plural form thereof, giving effect to the numerical difference; whenever the context so requires, the use of "it" in reference to Mortgagor shall mean Mortgagor as identified at the beginning of this Mortgage.

- (A) "And/or": one or the other or both, or any one or more of all, of the things or "Persons" (hereinafter defined) in connection with which the conjunction is used.
- (B) "Charges": all national, federal, state, county, city, municipal and/or other governmental (or any instrumentality, division, agency, body or department thereof) charges, impositions, levies, assessments and taxes (whether general, special or otherwise), water charges, sewer service charges, liens, claims or encumbrances upon and/or relating to the "Mortgaged Property" (hereinafter defined), "Mortgagor's Liability" (hereinafter defined) and/or "Mortgagor's Obligations" (hereinafter defined).
- (C) "Documents": the definition ascribed to this term in Paragraph 2.3 below.
- (D) "Encumbrances": all liabilities claims, debts, exceptions, easements, restrictions, security interests, Charges and all other types of encumbrance.

THIS INSTRUMENT PREPARED AND AFTER RECORDING SHOULD BE RETURNED

TO: **GUTH & COUGHLIN, LTD.**
1204 E. Central Road
Arlington Heights, Illinois 60005

DEPT-01 RECORDING \$63.50
T#0010 TRAN 9867 02/25/93 13:59:00
#1225 * -93-148571
COOK COUNTY RECORDER

PIN NUMBER: 12-32-328-015

COMMON ADDRESS: 216 E. North Avenue
Northlake, Illinois 60164

INVESTORS TITLE GUARANTEE



MAIL TO

cab
February
ff

Bertoline

UNOFFICIAL COPY

19 Oct 1996

19 Oct 1996

19 Oct 1996

Property of Cook County Clerk's Office

UNOFFICIAL COPY

- (E) "Equipment": all present and future apparatus, machinery, equipment, furniture, fixtures and articles of personal property of any and every kind and nature whatsoever, except for inventory, used, attached to, installed or located in or on the "Premises" (hereinafter defined), or required for use in or on or in connection with the Premises or the management, maintenance, operation or business thereof and all replacements thereof, substitutions therefore and accessions thereto, including without limitation, any such item now or at any time otherwise deliver heat, gas, air conditioning, water, light, electricity, power, plumbing, refrigeration, sprinkling, ventilation, mobility, communication, incineration, and all other related or other such services.
- (F) "Event of Default": the definition ascribed to this term in Paragraph 6.1 below.
- (G) "Leases": all present and future leases, agreements, tenancies, licenses and franchises of or from the Premises and/or the Equipment or in any way, manner or respect required, existing, used or usable in connection with the Premises and/or the Equipment or the management, maintenance, operation or business thereof, and all deposits of money as advance rent or for security under any or all of the Leases and all guaranties of lessee's performances hereunder.
- (H) "Mortgaged Property": (a) the Premises; (b) the "Rents" (Hereinafter defined); (c) the Leases; (d) the Equipment (which shall be deemed to be a part of the Premises, whether physically attached thereto or not); (e) all present and future judgments, awards of damages and settlements made as a result or in lieu of any taking of the Premises, the Equipment and/or the Leases, or any part thereof, under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) thereto; (f) all present and future insurance policies in force or effect insuring the Premises, the Rents, the Leases or the Equipment; and (g) all proceeds of each and every of the foregoing.
- (I) "Mortgagor's Liabilities": (a) the payment of any and all monies, including without limitation, the payment when due or declared due, of the principal sum of the Note and interest thereon (including all additional interest set forth therein), now and/or hereafter owed or to become owing by Mortgagor to Mortgagee under and/or pursuant to the terms and provisions of the Note; (b) the payment of any and all other debts, claims, obligations, demands, monies, liabilities and/or indebtedness (of any and every kind or nature) now and/or hereafter owing, arising, due or payable from Mortgagor to Mortgagee under and/or pursuant to the terms and provisions of this Mortgage (including without limitation, all advances made to protect and preserve the value of the Mortgaged Property and the priority of Mortgagee's lien thereon); and (c) the payment of any and all other debts, claims, obligations, demands, monies, liabilities and/or indebtedness (of any and every kind or nature) now and/or hereafter owing, arising, due or payable from Mortgagor to Mortgagee, howsoever evidenced, created, incurred, acquired or owing, whether primary, secondary, direct, contingent, fixed or otherwise and arising under and/or pursuant to the terms and provisions of this Mortgage or the Note.
- (J) "Mortgagor's Obligations": the prompt, full and faithful

93148571

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

performance, discharge, compliance and observance by Mortgagor of each and every term, condition, warranty, representation, agreement, undertaking, covenant and provision to be performed, discharged, observed or complied with by Mortgagor contained in this Mortgage, and/or the Note, an/or any other document, instrument, or agreement of the Mortgagor in favor of the Mortgagee.

- (K) **"Person"**: any individual, sole proprietorship, partnership, joint venture, trust, unincorporated organization, association, corporation, institution, entity, party or government (whether national, federal, state, county, city, municipal or otherwise, including without limitation any instrumentality, division, agency, body or department thereof).
- (L) **"Premises"**: all of the following described real estate and all of the Mortgagor's estate, right, title, and interest therein, situated, lying and being in the City of Northlake, County of Cook State of Illinois, and legally described on Exhibit "A" attached hereto and made a part hereof and commonly known as, 216 E. North Avenue, Northlake, Illinois, together with all buildings, improvements, tenements, easements, hereditaments and appurtenances now and/or at any time or times hereafter upon, belonging or otherwise appertaining to or situated on said real estate and all heretofore or hereafter acquired roads, alleys, streets and other publicways abutting said real estate, whether before or after vacation thereof.
- (M) **"Rents"**: all present and future rents, issues, avails, profits and proceeds of or from the Premises, the Leases and/or the Equipment.

2. CONVEYANCE

2.1 To secure the payment by Mortgagor of Mortgagor's Liabilities and the performance by Mortgagor of Mortgagor's Obligations, Mortgagor hereby does warrant, grant, give, bargain, confirm, assign, pledge, set over, transfer, sell, convey, remise, release and otherwise mortgage to Mortgagee, its successors and assigns, forever, the Mortgaged Property for the purposes and uses set forth in this Mortgage; provided, nevertheless, that if Mortgagor, its successors or assigns, shall satisfy, discharge and otherwise pay to Mortgagee, its successors or assigns, in full, Mortgagor's Liabilities and keep and perform all of Mortgagor's Obligations, then this Mortgage shall become null and void and shall be released at Mortgagor's expense.

2.2 This Mortgage shall operate as and constitute a Security Agreement with respect to that portion of the Mortgaged Property constituting property or interests in property, whether real or personal, tangible or intangible, which are subject to the priority and perfection of security interest provisions of the Uniform Commercial Code or any similar and applicable law, statute, code or other governing body of law. Therefore, to secure the payment by Mortgagor of Mortgagor's Obligations, Mortgagor hereby grants to Mortgagee a security interest in the Mortgaged Property.

2.3 Mortgagor, immediately upon request by Mortgagee, at Mortgagor's sole expense, will make, execute and deliver and/or will cause to be made, executed and delivered to and/or for the benefit of Mortgagee, in form and substance acceptable to Mortgagee, all Documents that Mortgagee is advised are and/or deems necessary or appropriate to evidence, document or conclude the transactions described in and/or contemplated by this Mortgage and the Note or required to perfect or continue perfected, as valid Encumbrances, the Encumbrances granted herein or in the Note or in any other agreements by Mortgagor to Mortgagee upon the Mortgaged

93148571

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Property. "Documents" means any mortgage, deed of trust or similar instrument, assignment of leases, assignment of rents, note, security agreement, guaranty, financing statement, assignment of insurance, loss payable clause, mortgage title insurance policy, letter of opinion, waiver letter, estoppel letter, consent letter, non-offset letter, insurance certificate, appraisal, survey and any other similar such agreements, instruments or documents.

2.4 Mortgagor shall be liable for and shall pay to Mortgagee upon the execution of this Mortgage and the Note the reasonable costs, fees and expenses incurred by Mortgagee in the negotiation, documentation, and closing of the Loan, including, but not limited to, the reasonable attorneys' fees, costs and expenses incurred by Mortgagee. In further consideration for granting the Loan, Mortgagor shall pay to Mortgagee a service fee of ____% of the Loan, and such service fee shall be due and payable upon the execution of this Mortgage and the Note, unless otherwise required by agreement of the parties

3 COVENANTS, WARRANTIES AND REPRESENTATIONS

3.1 Mortgagor covenants with and warrants and represents to Mortgagee as follows:

- (A) Mortgagor promptly will pay, or cause to be paid, when due or declared due, Mortgagor's Liabilities, and promptly, fully and faithfully will perform, discharge, observe and comply with each and every of Mortgagor's Obligations.
- (B) Mortgagor now has and hereafter shall maintain the standing, right, power and lawful authority to own the Mortgaged Property, to carry on the business of and operate the Mortgage Property, to enter into, execute and deliver this Mortgage and the Note, to encumber the Mortgaged Property to Mortgagee as provided herein, in the Note, or in any other agreements, and to perform all of Mortgagor's Obligations and to consummate all of the transactions described in or contemplated by this Mortgage, the Note, and any other agreements.
- (C) The execution, delivery and performance by Mortgagor of and under this Mortgage, the Note and any other agreements does not and will not constitute a violation of any applicable law and does not and will not conflict with or result in a default or breach of or under or an acceleration of any obligation arising, existing or created by or under any agreement, instrument, document, mortgage, deed, trust deed, note, judgment, order, award, decree or other restrictions to which Mortgagor or any of the Mortgaged Property is or hereafter shall become a party or by with Mortgagor or any of the Mortgaged Property is or hereafter shall become bound.
- (D) Mortgagor has duly filed and shall continue timely to file all federal, state and other governmental tax and similar returns which Mortgagor is required by law to file with respect to the Mortgaged Property and the operation and business thereof and shall provide accurate copies of all such financial information and returns including, but not limited to, profit and loss statements and financial statements, as and when reasonably required by Mortgagee. All taxes and other sums which are shown to be payable under such returns have been and shall be timely and fully paid and Mortgagor shall maintain adequate reserves in amounts to pay fully all such liabilities which hereafter may accrue.
- (E) All of the Leases, if any, are and shall remain genuine, in all respects what they purport to be, free of set-

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

offs, counterclaims or disputes and valid and enforceable in accordance with their terms. All parties to the Leases have and shall have the capacity to contract thereunder. Except for security deposits provided for under the Leases, and revealed by Mortgagee to Mortgagor in writing, no advance payments have been or shall be made thereunder.

- (F) There is no litigation, action, claim or proceeding pending or threatened which might, in any way, manner or respect, materially or adversely affect the Mortgaged Property, the operation or the business thereof, Mortgagee's Encumbrances thereon, the collectibility of the obligations under the Note, the ability of Mortgagor to repay the obligations under the Note, or the financial condition of the Mortgaged Property or the operation or business thereof.
- (G) Mortgagor and the Mortgaged Property possess and hold and shall maintain adequate properties, interest in properties, leases, licenses, franchises, rights and governmental and other permits, certificates, consents and approvals to conduct and operate the business of the Mortgaged Property. None of the foregoing contain or shall contain any term or condition that is materially burdensome to said business or materially different than those of the foregoing customarily possessed or held by other parties conducting or operating a similar business.
- (H) The location, existence and use of the Premises and the Equipment are and shall remain in compliance with all applicable federal, state and municipal laws, rules, ordinances and regulations, including without limitation, environmental, building and zoning laws, and all covenants and restrictions of record.
- (I) Mortgagor is and shall remain in peaceful possession of and will forever warrant and defend the Mortgaged Property from and against any and all claims thereon or thereto of any and all parties.

3.2 Mortgagor covenants with and warrants and represents to Mortgagee that Mortgagor is lawfully seized, possessed and the owner of and has good and indefeasible, marketable fee-simple title to the Mortgage Property, free and clear of all Encumbrances except (i) the Encumbrances of Mortgagee, and (ii) those Encumbrances described on Exhibit B attached hereto and made a part hereof.

3.3 Mortgagor covenants with and warrants and represents to Mortgagee as follows:

- (A) Mortgagor will not materially change the use or character of or abandon the Mortgaged Property and at all times hereafter shall keep the Mortgaged Property in good condition and repair and will not commit or suffer waste and will make all necessary repairs, replacements and renewals (including the replacement of any items of the Equipment) to the Mortgaged property so that the value and operating efficiency thereof shall at all times hereafter be maintained and preserved. Mortgagor shall not remove any trade fixtures or demolish any building or improvement located in or on the Premises without Mortgagee's prior written consent which shall not unreasonably be withheld. Mortgagor shall pay for and complete, within a reasonable time, any building or improvement at any time in the process of erection upon the Premises, shall refrain from impairing or diminishing the value of the Mortgaged Property, and shall make no material alterations to the Mortgaged Property which in the opinion of Mortgagee diminishes its value and subject

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

to the provisions of subparagraph 4.1(B)(2) and 4.3(B) of this Mortgage, if Mortgagee elects to release insurance or condemnation proceeds to Mortgagor, Mortgagor shall promptly repair, restore or rebuild any building or improvement now or hereafter on the Premises which may become damaged or destroyed. Mortgagor shall comply with all requirements of law and all municipal ordinances governing the Mortgaged Property and the use thereof. Mortgagor shall permit Mortgagee, and its agents, upon demand, access to and to inspect the Mortgaged Property at all reasonable times.

- (B) Mortgagor promptly shall pay and discharge, as and when due and payable, before any penalty attaches, all Charges, that may be at any time levied, assessed or imposed upon or against the Mortgaged Property, or any part thereof, and shall deliver to Mortgagee duplicate receipts evidencing payment thereof or partial payment thereof, if payable in installments, at least thirty (30) days before delinquency, provided that Mortgagor shall have the right to contest in good faith, by an appropriate proceeding properly initiated and diligently conducted, the validity, amount or imposition of any Charges, and upon such good faith contest to delay or refuse payment thereof, if (i) Mortgagor establishes adequate reserves to cover such contested Charges, and (ii) either such contest will not affect the priority or value of Mortgagee's lien on the Mortgaged Property or Mortgagor otherwise takes steps reasonably acceptable to Mortgagee to protect the priority and value of Mortgagee's lien on the Mortgaged Property. If at any time the United States of America shall require internal revenue stamps to be affixed to this Mortgage or the Note, Mortgagor will pay for the same, together with any interest or penalties imposed in connection therewith.
- (C) Mortgagor shall keep the Mortgaged Property free and clear of all Encumbrances (including, without limitation, mechanics liens and other similar liens or claims for liens) of any and every kind and nature except those described in Paragraph 3.2 above, and, shall promptly pay or cause to be paid, as and when due and payable or when declared due and payable, any indebtedness which may become or be secured by such an Encumbrance and, immediately upon request by Mortgagee, shall deliver to Mortgagee evidence satisfactory to Mortgagee of the payment and discharge thereof, provided that Mortgagor shall have the right to contest in good faith, by an appropriate proceeding properly initiated and diligently conducted, the validity, amount or imposition of any Encumbrance, and upon such good faith contest to delay or refuse payment thereof, if, (i) Mortgagor establishes adequate reserves to cover such contested Encumbrance and (ii) either such contest will not affect the priority or value of Mortgagee's lien on the Mortgaged Property or Mortgagor otherwise takes steps reasonably acceptable to Mortgagee to protect the priority and value of Mortgagee's lien on the Mortgaged Property. If, in accordance with the terms of this Mortgage, Mortgagee makes payment of any such Encumbrance, Mortgagee shall be subrogated to the rights of such claimant, notwithstanding that the Encumbrance may be released of record.
- (D) Mortgagor shall not, at any time or times hereafter, pledge, hypothecate or otherwise encumber all or any portion of the Mortgaged Property or Mortgagor's interest therein for secondary financing or otherwise. Without the prior written consent of Mortgagee, Mortgagor shall not sell or otherwise transfer all or any portion of the

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Mortgaged Property or Mortgagor's interest therein. Mortgagee, in its sole discretion, may deliver or withhold such consent based upon Mortgagee's determination, to its sole satisfaction, of the credit worthiness and ability of the proposed assignee, transferee or purchaser to satisfy, perform and discharge Mortgagor's Liabilities in a proper and timely fashion and manner. Mortgagee in its sole discretion, may condition the delivery of its consent upon Mortgagor agreeing to provide for such additional terms and conditions in the Note or this Mortgage or any other agreements as may be acceptable to Mortgagee, in its sole discretion.

- (E) All present and future items of fixtures, equipment, furnishings or other tangible personal property (whether or not constituting a part of the Mortgaged Property) related or necessary to or used or usable in connection with any present or future building or improvement on the Premises, or the operation or business thereof, are and will be owned free and clear of all Encumbrances except those described in Paragraph 3.2 above and Mortgagor will not acquire any such property subject to any Encumbrance except those Encumbrances described in Paragraph 3.2 above. The foregoing provision shall not apply to inventory.

3.4 If Mortgagor, within thirty (30) days after written demand from Mortgagee, shall neglect or refuse to keep the Mortgaged Property in good operating condition and repair or to replace or maintain the same as herein agreed, or otherwise defaults in the performance of Mortgagor's Obligations, or within ten (10) days after written demand from Mortgagee fails to pay the premiums for the insurance which is required to be maintained hereunder, or unless being contested in the manner herein provided, fails to pay and discharge all Encumbrances as herein agreed, Mortgagee, at its sole election, may cause such repairs or replacements to be made, obtain such insurance, pay such Encumbrances or perform such Obligations. Any amounts paid by Mortgagee in taking such action together with a per annum rate of interest thereon (computed on the basis of a 360-day year and charged for actual days elapsed) equal to 5% plus the rate of interest announced and/or published publicly from time to time by the Bank at its principal place of business in Northlake, Illinois as its corporate base (or equivalent) rate of interest, from the date of Mortgagee's payment thereof until repaid by Mortgagor to Mortgagee, shall be due and payable by Mortgagor to Mortgagee upon demand, and, until paid, shall constitute a part of Mortgagor's Liabilities secured by this Mortgage. Notwithstanding the foregoing, such advances by Mortgagee shall not be deemed to relieve Mortgagor from any default hereunder or impair any right or remedy consequent thereon. The exercise of the right to take such action shall be optional with Mortgagee and not obligatory upon Mortgagee and Mortgagee shall not in any case be liable to Mortgagor for failure or refusal to exercise any such right. In making any payments pursuant to the exercise of any such right, Mortgagee may rely upon any bills delivered to it by Mortgagor or any such payee and shall not be liable for any failure to make payments in any amounts other than as set forth in any such bills.

4. TAXES, INSURANCE AND CONDEMNATION

4.1 Mortgagor covenants with and warrants and represents to Mortgagee as follows:

- (A) Mortgagor, at all times, shall keep and maintain the Mortgaged Property fully insured (without co-insurance) against loss or damage by, or abatement of rental income resulting from fire and such other hazards, casualties and contingencies as Mortgagee, from time to time, may

UNOFFICIAL COPY

Property of Cook County Clerk's Office

11/11/2011

UNOFFICIAL COPY

require in companies, form, amounts and for such periods as are satisfactory to Mortgagee, but, in any event, for not less than the full replacement cost of the Mortgaged Property. The casualty company chosen by Mortgagor shall be one acceptable and satisfactory to Mortgagee. All such policies and renewals thereof shall contain, in form and substance acceptable to Mortgagee, standard mortgagee loss payable clauses naming Mortgagee as a loss payee as well as a standard waiver of subrogation endorsement and shall be delivered, as issued, to Mortgagee, with premiums therefore paid in full by Mortgagor. All policies shall provide that they are non-cancelable by the insurer without first giving at least thirty (30) days prior written notice to Mortgagee of any intended cancellation. Mortgagor will give immediate written notice to Mortgagee of any loss or damage to the Mortgaged Property caused by any casualty. In case of policies about to expire, Mortgagor will deliver to and deposit with Mortgagee renewal policies not less than thirty (30) days prior to the respective dates of expiration. Mortgagor will deliver and deposit with Mortgagee receipts for the payment of the premiums on all notices and renewals thereof. In the event of foreclosure of title to the Mortgaged Property in extinguishment of Mortgagor's Liabilities, all right, title and interest of Mortgagor in and to any policies then in force shall pass to the purchaser, grantee or assignee.

- (1) Full power is hereby conferred on Mortgagee:
 - (a) to settle and compromise all claims under all policies;
 - (b) to demand, receive and receipt for all monies becoming due and/or payable under all policies;
 - (c) to execute, in the name of Mortgagor or the name of Mortgagee, any proofs of loss notices or other instruments in connection with all claims under all policies; and
 - (d) to assign all policies to any holder or Mortgagor's Liabilities or to the grantee of the Mortgaged Property in the event of the foreclosure of this Mortgage or other transfer of title to the Mortgaged Property.
- (2) In the event of payment under any of the policies, the proceeds of the policies shall be paid by the insurer to Mortgagee and Mortgagee, in its sole and absolute discretion, may:
 - (a) apply such proceeds, wholly or partially after deducting all costs of collection, including reasonable attorneys' fees, either:
 - (i) toward the alteration, reconstruction, repair or restoration of the Mortgaged Property or any portion thereof; or
 - (ii) as a payment on account of Mortgagor's Liabilities (without affecting the amount or time of subsequent payments required be made by Mortgagor to Mortgagee under the Note) whether or not then due and payable; or
 - (b) deliver the same to Mortgagor; provided,

UNOFFICIAL COPY

Property of Cook County Clerk's Office

4/11/11

UNOFFICIAL COPY

however, in the case of a payment on account of damage or destruction of the Mortgaged Property where restoration is economically feasible and the Mortgaged Property can be repaired or restored within 180 days, such proceeds shall be applied by Mortgagee in accordance with (a) above. Mortgagor shall continue to pay Mortgagor's Liabilities as and when due notwithstanding any loss of use of all or part of the Mortgaged Property.

4.2 Mortgagor covenants with and warrants and represents to Mortgagee as follows:

- (A) Funds for Taxes and Insurance. Subject to applicable law or to a written waiver by Mortgagee, Mortgagor shall pay to Mortgagee on the day monthly payments are due under the Note until the Note is paid in full, a sum ("Funds") equal to one-twelfth of : (a) yearly taxes and assessments which may attain priority over this Security Instrument; (b) yearly leasehold payments or ground rents on the Property, if any; (c) yearly hazard insurance premiums; and (d) yearly mortgage insurance premiums, if any. These items are called "escrow items". Mortgagee may estimate the Funds due on the basis of current data and reasonable estimates of future escrow items.

The Funds shall be held in an institution the deposits or accounts of which are insured or guaranteed by a federal or state agency (including Mortgagee if Mortgagee is such an institution). Mortgagee shall apply the Funds to pay the escrow items. Mortgagee may not charge for holding and applying the Funds, analyzing the account or verifying the escrow items, unless Mortgagee pays Mortgagor interest on the Funds and applicable law permits Mortgagee to make such a charge. Mortgagor and Mortgagee may agree in writing that interest shall be paid on the Funds. Unless an agreement is made or applicable law requires interest to be paid, Mortgagee shall not be required to pay Mortgagor any interest or earnings on the Funds. Mortgagee shall give to Mortgagor, without charge, an annual accounting of the Funds showing credits and debits to the Funds and the purpose for which each debit to the Funds was made. The Funds are pledged as additional security for the sums secured by this Security Instrument.

If the amount of the Funds held by Mortgagee, together with the future monthly payments of Funds payable prior to the due dates of the escrow items, shall exceed the amount required to pay the escrow items when due, the excess shall be, at Mortgagee's option, either promptly repaid to Mortgagor or credited to Mortgagor on monthly payments of Funds. If the amount of the Funds held by Mortgagee is not sufficient to pay the escrow items when due, Mortgagor shall pay to Mortgagee any amount necessary to make up the deficiency in one of more payments as required by Mortgagee.

Upon payment in full of all sums secured by this Security Instrument, Mortgagee shall promptly refund to Mortgagor any Funds held by Mortgagee. If under paragraph 7.8 the Property is sold or acquired by Mortgagee, Mortgagee shall apply, no later than immediately prior to the sale of the property or its acquisition by Mortgagee, any Funds held by Mortgagee at the time of application as a credit against the sums secured by this Security Instrument.

- (B) Upon an Event of Default, Mortgagee, at its election may

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

require Mortgagor to deposit with Mortgagee on the first (1st) day of each month until Mortgagor's Liabilities are fully paid, a sum equal to one-twelfth (1/12) of one hundred fifteen percent (115%) of the total annual Charges arising with respect to the Mortgaged Property for the most recent ascertainable tax year. Subject to the provisions of this Paragraph and provided that no Event of Default then exists, and no event which with notice or lapse of time or both would become an Event of Default then exists, Mortgagee shall, if it has required deposits by Mortgagor, pay when and to whom due and payable under applicable law, all of the aforesaid Charges. Notwithstanding the foregoing, Mortgagee does not hereby assume any of Mortgagor's obligations under said laws to make such payments and nothing contained herein, or in the Note, shall require Mortgagee to perform any such obligations of Mortgagor except for the making of the aforesaid payments in accordance with and subject to the above specified terms. Upon occurrence of a defaulter an Event of Default under this Mortgage or the Note, Mortgagee shall not be obligated to make such payments, but, at its sole election and in its sole discretion, may make any or all such payments.

- (C) If the deposits required by Subparagraph (A) above are insufficient to pay the Charges for which they are provided, on or before thirty (30) days before the same shall become due and payable, Mortgagor shall deposit with Mortgagee such additional monies as are necessary to pay, in full, such Charges.
- (D) Upon the written request of Mortgagee, Mortgagor shall establish with Mortgagee an insurance escrow for deposit of funds for the payment of insurance premiums for all insurance policies required to be obtained and maintained by Mortgagor pursuant to this Mortgage with respect to the Mortgaged Property. Such insurance escrow shall be in such amount and shall be subject to such terms and conditions as Mortgagee, in its sole and absolute discretion, may determine.

4.3 Mortgagor covenants with and warrants and represents to Mortgagee as follows:

- (A) All awards now or hereafter made by any public or quasi-public authority to or for the benefit of Mortgagor in any way, manner or respect affecting, arising from or relating to the Mortgaged Property, or any portion thereof, by virtue of an exercise of the right of eminent domain by such authority (including without limitation, any award for taking of title, possession or right of access to a public way, or for any change of grade of streets affecting the Mortgage Property) hereby are assigned to Mortgagee as additional security for the payment of Mortgagor's Liabilities (and for such purpose, Mortgagor hereby grants to Mortgagee a security interest therein).
- (B) Mortgagee shall and hereby is authorized, directed and empowered to collect and receive the proceeds of any such awards from the authorities making the same and to give proper receipts therefore (in Mortgagor's name, in Mortgagee's name or in both names), and may, in its sole and absolute discretion use such proceeds for any one or more of the following purposes:
 - (1) apply the same, or any part thereof, to Mortgagor's Liabilities, whether or not then matured and without affecting the amount or time of subsequent payments required to be made by Mortgagor to

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Mortgagee under the Note;

- (2) use the same, or any part thereof, to satisfy, perform or discharge any of Mortgagor's Obligations;
 - (3) use the same, or any part thereof, to replace, repair or restore any or all of the Mortgaged Property to a condition satisfactory to Mortgagee; or
 - (4) release the same to Mortgagor, provided, however, if it is economically feasible to repair or replace such portion of the Mortgaged Property so taken and such repair or replacement can be accomplished within 180 days, then such proceeds shall be applied by Mortgagee in accordance with (B) (3) above.
- (C) Mortgagor, immediately upon request by Mortgagee, shall make, execute and deliver and/or cause to be made, executed and delivered to an/or for the benefit of Mortgagee any and all assignments and other instruments sufficient to assign, and cause the payment directly to Mortgagee of, all such awards, free and clear of all Encumbrances except those Encumbrances described in Paragraph 3.2 above. Notwithstanding any taking by eminent domain, alteration of the grade of any street or other injury to or decrease in value of the Mortgaged Property by any public or quasi-public authority or corporation, Mortgagor shall continue to pay all of Mortgagor's Liabilities, as and when due and payable. If, prior to the receipt by Mortgagee of such award or payment, the Mortgaged Property shall have been sold on foreclosure of this Mortgage, Mortgagee shall have the right to receive such award or payment to the extent of any deficiency found to be due upon such sale, with legal interest thereon, whether or not a deficiency judgment on this Mortgage shall have been sought or recovered or denied, and the reasonable attorneys' and paralegal fees, costs, expenses and disbursements incurred by Mortgagee in connection with the collection of such award or payment.

5. LEASES AND RENTS

5.1 So long as there shall not have occurred an Event of Default under this Mortgage, Mortgagor shall have the right to collect all of the Rents arising from the Leases, if any, or renewals thereof, and shall hold the same, in trust, to be applied first to the payment of all Charges upon the Mortgaged Property, second to the cost of the maintenance of insurance policies upon the Mortgaged Property required hereby, third to the maintenance and repairs required hereby and lastly to the payment of Mortgagor's Liabilities, before using any part of the Rents for any other purposes.

5.2 At all times, Mortgagee or any of Mortgagee's agents shall have the right to verify the validity, amount or any other matter relating to any or all of the Leases, by mail, telephone, telegraph or otherwise, in the name of Mortgagor, Mortgagee, a nominee of Mortgagee or in any or all of said names.

5.3 Unless Mortgagee notifies Mortgagor thereof in writing that it dispenses with any one or more of the following requirements, Mortgagor shall: (a) promptly upon Mortgagor's receipt or learning thereof, inform Mortgagee, in writing, of any assertion of any claims, offsets or counterclaims by any of the

UNOFFICIAL COPY

Property of Cook County Clerk's Office

11/11/2011 10:11:11 AM

UNOFFICIAL COPY

obligers of the Leases; (b) not permit or agree to any material extension, compromise or settlement or make any material change or modification of any kind or nature of or with respect to the Leases or the terms thereof; and (c) promptly upon Mortgagor's receipt or learning thereof, furnish to and inform Mortgagee of all material adverse information relating to or affecting the financial condition of any obligor of the Leases.

5.4 Within fifteen (15) days after demand therefore by Mortgagee, Mortgagor shall deliver to Mortgagee, in form and substance acceptable to Mortgagee, a detailed certified rent roll of all the Leases, if any, and such other matters and information relating thereto as Mortgagee may request, including, but not limited to, a Subordinate, Attornment and Non-Disturbance Agreement, to be executed by the tenants and Mortgagor.

5.5 Upon the occurrence of an Event of Default under this Mortgage

- (A) Immediately upon demand by Mortgagee, Mortgagor shall deliver to Mortgagee the originals of the Leases, if any, with appropriate endorsement and/or other specific evidence of assignment thereto to Mortgagee, which endorsement and/or assignment shall be in form and substance acceptable to Mortgagee.
- (B) Mortgagee, then or at any time or times thereafter, at its sole election, without notice thereof to Mortgagor, may notify any or all of the obligers of the Leases that the Leases have been assigned to Mortgagee and Mortgagee (in its name, in the name of Mortgagor or in both names) may direct said obligers thereafter to make all payments due from them under the Leases directly to Mortgagee.
- (C) Mortgagor, immediately upon demand by Mortgagee, irrevocably, shall direct all obligers of the Leases, then and thereafter to make all payments then and thereafter due from them under the Leases directly to Mortgagee.
- (D) Mortgagee shall have the right at any time or times thereafter, at its sole election, without notice thereof to Mortgagor, to enforce the terms of the Leases, if any, and obtain payment of and collect the Rents, by legal proceedings or otherwise, in the name of Mortgagor, Mortgagee or in both names.
- (E) Mortgagor, irrevocably, hereby designates, makes, constitutes and appoints Mortgagee (and all Persons designated by Mortgagee) as Mortgagor's true and lawful attorney and agent-in-fact, with power, without notice to Mortgagor and at such time or times thereafter as Mortgagee, at its sole election, may determine in the name of Mortgagor, Mortgagee or in both names. (i) to demand payment of the Rents and performance of the Leases, if any; (ii) to enforce payment of the Rents and performance of the Leases, by legal proceedings or otherwise; (iii) to exercise any or all of Mortgagor's rights, interests and remedies in and under the Leases and to collect the Rents; (iv) to settle, adjust, compromise, extend or renew the Leases and/or the Rents; (v) to settle, adjust or compromise any legal proceeding brought to collect the Rents or obtain performance of the Leases; (vi) to take control, in any manner, of the Rents; (vii) to prepare, file and sign Mortgagor's name on any Proof of Claim in bankruptcy, or similar document in a similar proceeding, against any obligor of the Leases; (viii) to endorse the name of Mortgagor upon any payments or proceeds of the Rents and to deposit the same to the account of Mortgagee; and (ix) to do all acts and

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

things necessary, in Mortgagee's sole discretion, to carry out any or all of the foregoing.

- (F) All of the foregoing payments and proceeds received by Mortgagee shall be utilized by Mortgagee, at its sole election and in its sole discretion, for any one or more of the following purposes; (i) to be held by Mortgagee as additional collateral for the payment of Mortgagor's Liabilities; (ii) to be applied to Mortgagor's Liabilities in such manner and fashion and to such portions thereof as Mortgagee, at its sole election, shall determine; (iii) to be applied to such obligations of Mortgagor or the Mortgaged Property or the operation or business thereof as Mortgagee, at its sole election, shall determine appropriate or warranted under the then existing circumstances; or, (iv) to be remitted to Mortgagor.

6. DEFAULT

6.1 The occurrence of any one or more of the following events shall constitute an "Event of Default" under this Mortgage:

- (A) If Mortgagor fails or neglects to perform, keep or observe any of Mortgagor's Obligations within thirty (30) days of notice from Mortgagee, or any other term, provision, condition, covenant, warranty or representation contained in this Mortgage, in the Note, or in any other agreements, which is required to be performed, kept or observed by Mortgagor.
- (B) If any material statement, report or certificate made or delivered by Mortgagor, or any of its partners, officers, employees or agents, to Mortgagee is not true and correct.
- (C) If Mortgagor fails to pay Mortgagor's Liabilities when due and payable or declared due and payable within five (5) days of notice from Mortgagee.
- (D) If the Mortgaged Property or any other of Mortgagor's assets are attached, seized, subjected to a writ of distress warrant, or are levied upon, or come within the possession of any receiver, trustee, custodian or assignee for the benefit of creditors and the same is not terminated or dismissed within sixty (60) days thereafter.
- (E) If a petition under any section or chapter of the Bankruptcy Reform Act of 1978, as amended, or any similar law or regulation shall be filed by Mortgagor or if Mortgagor shall make an assignment for the benefit of its creditors or if any case or proceeding is filed by Mortgagor for its dissolution or liquidation.
- (F) If Mortgagor is enjoined, restrained or in any way prevented by court order from conducting all or any material part of its business affairs or if a petition under any section or chapter of the Bankruptcy Reform Act of 1978, as amended, or any similar law or regulation is filed against Mortgagor or if any case or proceeding is filed against Mortgagor for its dissolution or liquidation and such injunction, restraint or petition is not dismissed or stayed within sixty (60) days after the entry or filing thereof.
- (G) If an application is made by Mortgagor for the appointment of a receiver, trustee or custodian for the Mortgaged Property or any other of Mortgagor's assets.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

- (H) If an application is made by any Person other than Mortgagor for the appointment of a receiver, trustee, or custodian for the Mortgaged Property or any other of Mortgagor's assets and the same is not dismissed within thirty (30) days after the application therefore.
- (I) If a notice of lien, levy or assessment is filed of record with respect to all or any of Mortgagor's assets by the United States or any department, agency or instrumentality thereof or by any state, county, municipal or other governmental agency, including, without limitation, the Pension Benefit Guaranty Corporation, or if any Charges owing at any time or times hereafter to any one of them becomes an Encumbrance upon the Mortgaged Property or any other of Mortgagor's assets and the same is not released or contested in such manner as to stay the enforcement thereof within thirty (30) days after the same becomes and Encumbrance.
- (J) The occurrence of a default or an Event of Default under that certain Note dated as of January ____, 1993 or under any other documents.
- (K) If Mortgagor fails or neglects to provide to Mortgagee any and all tax returns, statements and other financial information as and when reasonably required by Mortgagee

6.2 Upon the occurrence of an Event of Default, without notice to or demand of Mortgagor, all of Mortgagor's Liabilities shall become immediately due and payable, and Mortgagee, in its sole discretion and at its sole election, without notice of such election, and without demand, may do any one or more of the following:

- (A) Collect Mortgagor's Liabilities at once by foreclosure or otherwise, including exercising any rights or remedies granted to Mortgagee as "Payee" under that certain Note, without notice of broken covenant or condition (and in case of such default and the exercise of such option, Mortgagor's Liabilities shall bear interest, from the date of such default, at the rate provided in Paragraph 3.4 hereof).
- (B) Subject to applicable law, forcibly or otherwise, enter upon and take immediate possession of the Mortgaged Property, expel and remove any Persons, goods or chattels occupying or upon the same, receive all Rents, if any, and issue receipts therefore, manage, control and operate the Mortgaged Property as fully as Mortgagor might do if in possession thereof, including, without limitation, the making of all repairs and replacements deemed necessary by Mortgagee and the leasing of the same, or any part thereof, from time to time, and after deducting all reasonable attorneys' fees and all costs and expenses incurred in the protection, care, maintenance, management and operation of the Mortgaged Property, apply the remaining net income, if any, to Mortgagor's Liabilities or upon any deficiency decree entered in any foreclosure proceeding. At the option of Mortgagee, such entry and taking of possession shall be accomplished either by actual entry and possession or by written notice served personally upon or sent by registered mail to Mortgagor at the address of Mortgagor last appearing on the records of Mortgagee. Mortgagor agrees to surrender possession of the Mortgaged Property to Mortgagee immediately upon the occurrence of an Event of Default. If Mortgagor shall remain in physical possession of the Mortgaged Property, or any part thereof, after any such default, such possession shall be as a tenant at sufferance of Mortgagee, and Mortgagor agrees to pay to Mortgagee, or

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

to any receiver appointed as provided below, after such default, a reasonable monthly rental for the Mortgaged Property, or the part thereof so occupied by Mortgagor, to be applied as provided above in the first sentence of this Subparagraph, and to be paid in advance on the first day of each calendar month, and, in default of so doing, Mortgagor may be dispossessed by the usual summary proceedings. In the event Mortgagor shall so remain in possession of all, or any part of, the Mortgaged Property, said reasonable monthly rental shall be in amounts established by Mortgagee in its sole discretion. This covenant shall be effective irrespective of whether any foreclosure proceeding shall have been instituted and, irrespective of any application for, or appointment of, a receiver.

- (C) File one or more suits at law or in equity for the foreclosure of this Mortgage or to collect Mortgagor's Liabilities. In the event of the commencement of any such suit by Mortgagee, Mortgagee shall have the right, either before or after sale, without notice and without requiring bond (notice and bond being hereby waived), without regard to the solvency or insolvency of Mortgagor at the time of application and without regard to the then value of the Mortgaged Property or whether the same is then occupied, to make application for and obtain the appointment of a receiver for the Mortgaged Property. Such receiver shall have the power to collect the Rents during the pendency of such suit and, in case of a sale and a deficiency, during the full statutory period of redemption as well as during any further times when Mortgagor, except for the intervention of such receiver, would be entitled to collect the Rents, and shall have all other powers which may be necessary or usual in such cases for the protection, possession, control, management and operation of the mortgaged Property. The court before which such suit is pending may from time to time authorize the receiver to apply the net income in his hands in payment, in whole or in part, of Mortgagor's Liabilities. In case of a sale pursuant to foreclosure, the Premises may be sold as one parcel.
- (D) In the event of the commencement of any suit by Mortgagee to foreclose this Mortgage, Mortgagee shall have the right to apply to the court in which such proceedings are pending for entry of an order placing Mortgagee in possession of the Mortgaged Property. In the event an order is entered placing Mortgagee in possession of the Mortgaged Property, Mortgagee may thereupon enter upon and take immediate possession of the Mortgaged Property, expel and remove any Persons, goods or chattels occupying or upon the same, receive all Rents, and issue receipts therefore, manage, control and operate the mortgaged Property, including without limitation, make all repairs and replacements deemed necessary by Mortgagee and lease the same, or any part thereof, from time to time, and, after deducting all reasonable attorneys' and paralegal fees and all costs and expenses incurred in the protection, care, maintenance, management and operation of the Mortgaged Property, apply the remaining net income, if any, to Mortgagor's Liabilities or upon any deficiency decree entered in such foreclosure proceedings. At the option of Mortgagee, such entry and taking of possession shall be accomplished either by actual entry and possession or by written notice of entry of the order placing Mortgagee in possession served personally upon or sent by registered mail to Mortgagor at the address of Mortgagor last appearing on the records of Mortgagee. If Mortgagor shall remain in physical possession of the Mortgaged Property after entry of an

UNOFFICIAL COPY

Property of Cook County Clerk's Office

00000000

UNOFFICIAL COPY

order placing Mortgagee in possession, Mortgagor's possession shall be as a tenant at sufferance of Mortgagee, and Mortgagor agrees to pay to Mortgagee, or to any other Person authorized by Mortgagee, after entry of such order, a reasonable monthly rental for the Mortgaged Property, or the part thereof so occupied by Mortgagor, to be applied as provided above in the first sentence of Subparagraph (B) and to be paid in advance on the first day of each calendar month, and in default of so doing, Mortgagor may be dispossessed by the usual summary proceedings. In the event Mortgagor shall so remain in possession of all or of any part of the Mortgaged Property, said reasonable monthly rental shall be in amounts established by Mortgagee in its sole discretion.

6.3 Upon the occurrence of an Event of Default under this Mortgage, there will be added to and included as part of Mortgagor's Liabilities (and allowed in any decree for sale of the Mortgaged Property or in any judgment rendered upon this Mortgage or the Note) the following: all of the costs and expenses of taking possession of the Mortgaged Property and of the holding, using, leasing, maintaining, repairing and selling the same, including, without limitation, the costs, charges, expenses and attorneys' and paralegal' fees specified in Paragraph 6.4 below; receivers' fees' any and all expenditures which may be paid or incurred by or on behalf of Mortgagee for appraisers' fees, documentary and expert evidence, stenographers' charges, publication costs, fees and expenses for examination of title, title searches, guaranty policies, Torrens certificates and similar data and assurances with respect to the title to the Mortgaged Property; all prepayment or like premiums, if any, provided for in the Note; and all other fees, costs and expenses which Mortgagee deems necessary to prosecute any remedy it has under this Mortgage, or to inform bidders at any sale which may be had pursuant to its rights hereunder, of the true condition of title or of the value of the Mortgaged Property. All such costs, charges, expenses, prepayment or like premiums, fees and other expenditures shall be a part of Mortgagor's Liabilities, secured by this Mortgage, payable on demand and shall bear interest at the rate specified in Paragraph 3.4 hereof from the date of Mortgagee's payment thereof until repaid to Mortgagee.

6.4 If foreclosure proceedings are instituted upon this Mortgage, or if Mortgagee shall be a party to, shall intervene, or file any petition, answer, motion or other pleading in any suit or proceeding relating to this Mortgage, the Note or any other agreements, or Mortgagor's Liabilities, or if Mortgagee shall incur or pay any expenses, costs, charges or attorneys' fees or reason of the employment of counsel for advice with respect to this Mortgage, the Note, any other agreements, or Mortgagor's Liabilities, and whether in court proceedings or otherwise, such expenses and all of Mortgagee's reasonable attorneys' and paralegal' fees shall be part of Mortgagor's Liabilities, secured by this Mortgage, payable on demand and shall bear interest at the rate specified in Paragraph 3.4 hereof from the date of Mortgagee's payment thereof until repaid to Mortgagee.

6.5 The proceeds of any foreclosure sale of the Mortgaged Property shall be applied and distributed, first, on account of the fees, charges, costs and expenses described in Paragraph 6.3 and 6.4 above, second to the balance of Mortgagor's Liabilities, and third, the surplus, if any, to Mortgagor.

6.6 In the event of the commencement of judicial proceedings to foreclose this Mortgage, Mortgagor, on behalf of itself, its successors and assigns, and each and every Person it may legally bind acquiring any interest in or title to the Mortgaged Property subsequent to the date of this Mortgage: (a) does hereby expressly

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

waive any and all rights of appraisement, valuation, stay, extension and (to the extent permitted by law) redemption from sale under any order or decree of foreclosure of this Mortgage; and (b) does hereby agree that when sale is had under any decree of foreclosure of this Mortgage, upon confirmation of such sale, the master in chancery or other officer making such sale, or his successor in office, shall be and is authorized immediately to execute and deliver to any purchaser at any sale a deed conveying the Mortgaged Property, showing the amount paid therefore, or if purchased by the Person in whose favor the order or decree is entered, the amount of his bid therefore.

6.7 Mortgagee shall have the right from time to time to sue for any sums, whether interest, principal or other sums required to be paid by or for the account of Mortgagor under the terms of this Mortgage or the Note as the same become due under the Note or this Mortgage, or for any other of Mortgagor's Liabilities which shall become due and without prejudice to the right of Mortgagee thereafter to bring an action of foreclosure, or any other action, for a default or defaults by Mortgagor existing at the time such earlier action was commenced.

6.8 No right or remedy of Mortgagee hereunder is exclusive of any other right or remedy hereunder or now or hereafter existing at law or in equity, but is cumulative and in addition thereto and Mortgagee may recover judgment thereon, issue execution therefore, and resort to every other right or remedy available at law or in equity, without first exhausting or affecting or impairing the security or any right or remedy afforded by this Mortgage. No delay in exercising, or omission to exercise, any such right or remedy will impair any such right or remedy or will be construed to be a waiver of any default by Mortgagor hereunder, or acquiescence therein, nor will it affect any subsequent default hereunder by Mortgagor of the same or different nature. Every such right or remedy may be exercised independently or concurrently, and shown and so often as may be deemed expedient by Mortgagee. No terms or conditions contained in this Mortgage or the Note may be waived, altered or changed except as evidenced in writing signed by Mortgagor and Mortgagee.

6.9 Mortgagee shall release this Mortgage by proper instrument upon payment and discharge of all of Mortgagor's Liabilities, including all prepayment or like premiums, if any, provided for in the Note and any other agreements and payment of all costs, expenses and fees, including reasonable attorneys' and paralegal' fees, incurred by Mortgagee for the preparation, execution and/or recording of such release.

6.10 Upon occurrence of an event of Default and acceleration of the maturity of Mortgagor's Liabilities as provided herein, a tender of payment thereof by Mortgagor, or any other Person, or a payment thereof received upon or on account of a foreclosure of this Mortgage or Mortgagee's exercise of any of its other rights or remedies under this Mortgage, the Note, any other agreements or under any applicable law or in equity shall be deemed to be a voluntary prepayment made by Mortgagor of Mortgagor's Liabilities and, therefore, such payment must, to the extent permitted by law, include the premiums and other payments required under the prepayment privilege, if any, contained in the Note and any other agreements.

6.11 (A) Any agreements between Mortgagor and Mortgagee are expressly limited so that, in no event, whatsoever, whether by reason of disbursement of the proceeds of the Loan secured hereby or otherwise, shall the amount paid or agreed to be paid to Mortgagee for the use, detention or forbearance of the Loan proceeds to be disbursed exceed the highest lawful contract rate permissible under any law which a

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

court of competent jurisdiction may deem applicable thereto.

- (B) If fulfillment of any provision herein, or in the Note, at the time performance of such provision becomes due, involves exceeding such highest lawful contract rate, then ipso facto, the obligation to fulfill the same shall be reduced to such highest lawful contract rate. If by any circumstance Mortgagee shall ever receive an interest an amount which would exceed such highest lawful contract rate, the amount which may be deemed excessive interest shall be applied to the principal of Mortgagor's Liabilities and not to interest.
- (C) The terms and provisions of this Paragraph shall control all other terms and provisions contained herein, or in the Note, or in any other agreements.

6.12 Any failure of Mortgagee to insist upon the strict performance by Mortgagor of any of the terms and provisions of this Mortgage, the Note or any other agreements shall not be deemed to be a waiver of any of the terms and provisions thereof, and Mortgagee, notwithstanding any such failure, shall have the right at any time or times thereafter to insist upon the strict performance by Mortgagor of any and all of the terms and provisions thereof to be performed by Mortgagor. Neither Mortgagor, nor any other Person now or hereafter obligated for the payment of the whole or any part of Mortgagor's Liabilities, shall be relieved of such obligation by reason of the sale, conveyance or other transfer of the Mortgaged Property, or the failure of Mortgagee to comply with any request of Mortgagor, or of any other Person, to take action to foreclose this Mortgage or otherwise enforce any of the provisions of this Mortgage, the Note, or any other agreements or by reason of the release, regardless of consideration of the whole or any part of the security held for Mortgagor's Liabilities, or by reason of any agreement or stipulation between any subsequent owner or owners of the Mortgaged Property and Mortgagee extending the time of payment of Mortgagor's Liabilities or modifying the terms of the Note, any other agreements of this Mortgage without first having obtained the consent of Mortgagor or such other Person, and, in the latter event, Mortgagor, and all such other Persons, shall continue to be liable on account of Mortgagor's Liabilities and to make such payments according to the terms of any such agreement, extension or modification unless expressly released and discharged in writing by Mortgagee. Mortgagee, without notice, may release, regardless of consideration, any part of the security held for Mortgagor's Liabilities, without, as to the remainder of the security therefore, in any way impairing or affecting the lien of this Mortgage of the priority of such lien over any subordinate lien. Mortgagee may resort for the payment of Mortgagor's Liabilities to any other security therefore held by Mortgagee in such order and manner as Mortgagee may elect.

6.13 In the event of default for which the Mortgagee does not accelerate the loan, including the failure of Mortgagor or Guarantor to provide the financial statements as required hereunder or under the loan agreement, the applicable interest rate to the loan, for a period beginning three (3) days after written notice of such default and ending upon the curing of said noticed default, shall increase one-quarter of one percent (.25%) for the first thirty (30) days of said default and increase an additional one quarter of one percent (.25%) during each thirty (30) day period thereafter during which the noticed default continues. Such default interest rates shall apply to the outstanding principal balance of the loan. Upon the curing of the noticed default, the interest rate on the Loan shall revert to the initially agreed-upon interest rate effective on the date on which the default is cured.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

7. MISCELLANEOUS

7.1 Every provision for notice, demand or request, required in this Mortgage or by applicable law shall be deemed fulfilled by written notice, demand or request personally served on (with proof of service endorsed thereon) (, or mailed to, as hereinafter provided, the party entitled thereto or on its successors or assigns. If mailed, such notice, demand or request shall be made by certified or registered mail, return receipt requested, addressed to such party at its address as set forth below or to such other address as either party hereto shall direct by like written notice and shall be deemed to have been made on the third (3rd) day following posting as aforesaid. For the purposes herein, notice shall be sent to Mortgagor and Mortgagee as follows:

TO MORTGAGOR:

Midwest Bank and Trust Company
as Trustee Under Trust Created August 13, 1982
a/k/a Trust #82-08-3917
1606 N. Garlen Avenue
Elmwood Park, Illinois 60635

with a copy to:

Carlo A. Bertolino
216 E. North Avenue
Northlake, Illinois 60164

TO MORTGAGEE:

Northlake Bank
26 W. North Avenue
Northlake, Illinois 60164

with a copy to:

GUTH & COUGHLIN, LTD.
1204 E. Central Road
Arlington Heights, Illinois 60005

7.2 All of the covenants contained in this Mortgage will run with the land. Time is of the essence of this Mortgage and all provisions herein relating hereto shall be strictly construed.

7.3 This Mortgage, and all the provisions hereof, will be binding upon and inure to the benefit of the successors and assigns of Mortgagor and Mortgagee.

7.4 This Mortgage was executed and delivered in, and except as otherwise specifically stated in any given paragraph hereof, shall be governed as to validity, interpretation, construction, effect and in all other respects by the laws and decisions of the State of Illinois.

7.5 Any provision of this Mortgage which is unenforceable in any state in which this Mortgage may be filed or recorded or is invalid or contrary to the law of such state, or the inclusion of which would affect the validity, legality or enforcement of this Mortgage, shall be of no effect, and in such case all the remaining terms and provisions of this Mortgage shall subsist and be fully effective according to the tenor of this Mortgage, the same as though no such invalid portion had ever been included herein.

7.6 To the extent that any of Mortgagor's Liabilities represent funds utilized to satisfy any outstanding indebtedness or obligations secured by liens, rights or claims against the Mortgaged Property or any part thereof, Mortgagee shall be subrogated to any and all liens, rights, superior titles and

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

equities owned or claimed by the holder of any such outstanding indebtedness or obligation so satisfied, however remote, regardless of whether said liens, rights, superior titles and equities are by the holder(s) thereof assigned to Mortgagee or release.

7.7 Transfer of the Property or a Beneficial Interest in Mortgagor. If all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Mortgagor is sold or transferred and Mortgagor is not a natural person) without Mortgagee's prior written consent, Mortgagee may, at its option, require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Mortgagee if exercise is prohibited by federal law as of the date of this Security Instrument.

If Mortgagee exercises this option, Mortgagee shall give Mortgagor notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is delivered or mailed within which Mortgagor must pay all sums secured by this Security Instrument. If Mortgagor fails to pay these sums prior to the expiration of this period, Mortgagee may invoke any remedies permitted by this Security Instrument without further notice or demand on Mortgagor.

7.8. Acceleration: Remedies. Mortgagee shall give notice to Mortgagor prior to acceleration following Mortgagor's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under paragraph 7.7 unless applicable law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Mortgagor, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument, foreclosure by judicial proceeding and sale of the Property. The notice shall further inform Mortgagor of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Mortgagor to acceleration and foreclosure. If the default is not cured on or before the date specified in the notice, Mortgagee at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may foreclose this Security Instrument by judicial proceeding. Mortgagee shall be entitled to collect all expenses incurred in pursuing the remedies provided in this paragraph, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

This Mortgage is executed by MIDWEST BANK AND TRUST COMPANY, as Trustee, solely in the exercise of the authority conferred upon it as said Trustee, and no personal liability or responsibility shall be assumed by, nor at any time be asserted or enforced against it, its agents or employees on account hereof, or on account of any promises, covenants, undertakings or agreements herein or in said Note contained either expressed or implied; all such liability if any being expressly waived and released by the Mortgagee or holder or holders of said Note and by all persons claiming by, through or under said Mortgage or the holder or holders, owner or owners of said Note and by every person now or hereafter claiming any right or security thereunder. It is understood and agreed that MIDWEST BANK AND TRUST COMPANY, as Trustee shall have no obligation to see to the performance or non-performance of any of the covenants or promises herein contained, and shall not be liable for any action or non action taken in violation of any of the covenants herein contained. It is further understood and agreed that the Trustee is not entitled to receive any of the rents, issues or profits of or from said trust property and this instrument shall not be construed as an admission to the contrary.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Dated at Elmwood Park, Illinois this 22nd day of January, 1993.

MIDWEST BANK AND TRUST COMPANY,
not individually but solely as
Trustee as aforesaid

BY: Chester Szyska
Chester Szyska Operations Officer

ATTEST:

Michele Milewski
Trust Officer Michele Milewski

This instrument is hereby understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding that each and all of the warranties, representations, covenants, indemnities, undertakings and agreements herein made on the part of the Midwest Bank and Trust Company while in form purporting to be the warranties, representations, covenants, indemnities, undertakings and agreements of said Midwest Bank and Trust Company are nevertheless each and every one of them made and intended not as personal warranties, representations, covenants, indemnities, undertakings and agreements by the Midwest Bank and Trust Company or for the purpose or with the intention of binding said Midwest Bank and Trust Company, personally but are made and intended solely for the purpose of binding that portion of the trust property specifically described herein; and this instrument is executed and delivered by said Midwest Bank and Trust Company not in its own right, but solely in the exercise of the powers conferred upon it by virtue of the said trust agreement; and that no personal liability or personal responsibility is assumed by, nor shall at any time be asserted or enforceable against the Midwest Bank and Trust Company on account of the instrument or on account of any warranties, representations, indemnities, covenants, undertakings or agreements in the instrument contained, either expressed or implied, in such personal liability, if any, being expressly waived and released by the other parties to this instrument and by all persons claiming by, through, or under said parties. The parties to this instrument hereby acknowledge that the terms of the said trust agreement the Midwest Bank and Trust Company has no obligations or duties in regard to the operation, management and control of the trust property, nor does it have any possessory interest therein; and that said bank has no right to any of the profits, rents and proceeds from said trust premises. Notwithstanding anything in this instrument contained to the contrary, the Midwest Bank and Trust Company is not the agent for the beneficiary of its trust, and in the event of any conflict between the provisions of this exemplary paragraph and the body of this instrument, the provisions of this paragraph shall control.

STATE OF ILLINOIS)
COUNTY OF COOK) SS

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Chester Szyska, Operations Officer, Trust Officer of MIDWEST BANK AND TRUST COMPANY and Michele Milewski, Asst. Vice President of said Company, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Trust Officer and Vice President, respectively, 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 and voluntary act of said Company, as Trustee as aforesaid, for the uses and purposes therein set forth; and the said Trust Officer then and there acknowledged that they as custodian of the corporation seal of this Company, did affix the corporate seal of said Company to said instrument as their own free and voluntary act and as the free and voluntary act of said Company, as Trustee, as aforesaid, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 22nd day of January, 1993.
February



Zelvis Lara
NOTARY PUBLIC

My commission expires: Oct. 7, 1996

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT "A" TO MORTGAGE DATED JANUARY _____, 1993

LEGAL DESCRIPTION

LOT 18 IN BLOCK 3 IN THE MIDLAND DEVELOPMENT COMPANY'S
NORTHLAKE VILLAGE UNIT NO. 3 A SUBDIVISION OF PART OF THE
SOUTH HALF OF SECTION 32, TOWNSHIP 40 NORTH, RANGE 12, EAST OF
THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF
RECORDED AS DOCUMENT 12378621 IN COOK COUNTY, ILLINOIS.

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Property of Cook County Clerk's Office