

UNOFFICIAL COPY

93257212

THIS MORTGAGE, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT (hereinafter referred to as this "Mortgage") is made as of MARCH 26 1993 from AMERICAN NATIONAL BANK & TRUST CO. OF CHICAGO, not personally but solely as Trustee pursuant to Trust Agreement dated 3/2/93 and known as Trust No. 115669-06 ("Mortgagor"), with a mailing address at 33 N. LASALLE STREET, CHICAGO, ILLINOIS, 60690 to Spalter Finance Co., ("Mortgagee"), with a mailing address at 8831-33 Gross Point Road, Skokie, Illinois, 60077;

WHEREAS, on the date hereof, the beneficiary (the "Beneficiary") of the above-described Trust Agreement executed and delivered to Mortgagee his Promissory Note (the "Note") of even date in the principal sum of SEVENTY-THREE THOUSAND FOUR HUNDRED FIFTY AND NO/100 (\$73,450.00)

Dollars made by EDDIE W. MIRANDA, SR. & MARGARITA H. MIRANDA aka MARGARITA H. CLAUDIO dba EDDIE & SON SUPER MART ("Maker") & GROCERY & PACKAGE LIQUORS payable to the order of Mortgagee in installments as follows:
SEVEN HUNDRED FOUR AND 17/100 (\$704.17)
 Dollars on the 26th day of APRIL 1993 and SEVEN HUNDRED FOUR AND 17/100 (\$704.17) Dollars on the same day of each and every month thereafter for (10) TEN successive months and final installment of SIXTY-FIVE THOUSAND SEVEN HUNDRED FOUR AND 13/100 (\$65,704.13)
 Dollars on the 26th day of MARCH 1994 (including a Finance Charge of \$8,450.00 as provided in the Note).
 All payments due under the Note shall be paid to Mortgagee at the office of Mortgagee at its address set forth above, and

WHEREAS, at the direction of the Beneficiary under the above-described Trust Agreement, the Mortgagor promises to pay out of the portion of the Trust Estate subject to the Trust Agreement the Note, and all other indebtedness, obligations and liabilities which this Mortgage secures pursuant to any of its terms.
 NOW THEREFORE, to secure payment of the Note when the same becomes due and payable (whether by lapse of time, acceleration or otherwise) including all renewals, extensions, modifications and refinancings and all other indebtedness, obligations and liabilities which this Mortgage secures pursuant to any of its terms. Mortgagor does hereby GRANT, MORTGAGE, CONVEY AND ASSIGN to Mortgagee, its successors and assigns, the following described real estate situated in the County of COOK, State of Illinois, to wit:

LOTS 21 AND 22 IN WILLIAM H. WITZEL'S SUBDIVISION OF THE WEST 1/2 OF THE NORTH WEST 1/4 OF THE NORTH EAST 1/4 OF SECTION 3, TOWNSHIP 39 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS AND COMMONLY KNOWN AS 1530-32 N. KILDARE, CHICAGO, IL 60651.

93257212

DEPT. 01 RECORDINGS \$25.00
 #8999 TRAN 7680 04/07/93 15:30:00
 #1398 # 93-025722 & 22
 COOK COUNTY RECORDER

Street Address: 1530-32 N. KILDARE, CHICAGO, IL 60651
 P.L.N. 16-03-202-025 & 026

Document prepared by ATTY. ROBERT D. GORDON, 205 W. RANDOLPH, SUITE 2701, CHICAGO, IL 60606

TOGETHER WITH (1) all buildings, improvements, fixtures, appurtenances, easements and hereditaments thereto belonging; and together with all equipment and machinery now or hereafter therein or thereon used to supply heat, gas, air conditioning, electrical, sprinkler systems, plumbing, water, light, power, refrigeration and ventilation; elevators, escalators, communication and electronic monitoring equipment, tanks, pumps and together with any other fixtures, equipment, machinery or other personal property now or hereafter placed on the above described property which shall be employed in connection with the operation, use, occupancy or enjoyment thereof; (2) all right, title and interest of Mortgagor, including any after-acquired title or reversion, in and to the rights-of-way, roads, streets, avenues and alleys adjoining the Mortgaged premises; (3) all rents, issues, proceeds and profits accruing and to accrue from the Mortgaged Premises and all right, title and interest of Mortgagor in and to any and all leases approved by Mortgagee now or hereafter on or affecting the Mortgaged Premises, whether written or oral, and all other leases and agreements for the use thereof (collectively "Leases"), together with all security therefor and all monies payable thereunder, subject, however, to the conditional permission of Mortgagee given to Mortgagor to collect the rentals to be paid pursuant thereto, provided Mortgagor shall not be in default hereunder; and (4) all proceeds heretofore or hereafter payable to Mortgagor by reason of loss or damage by fire and such other hazards, casualties and contingencies insured pursuant to the insurance policies hereinafter described and awards and other compensation heretofore or hereafter payable to Mortgagor for any taking by condemnation or eminent domain proceedings of all or any part of the Mortgaged Premises or any easement or appurtenance thereof, including severance and consequential damage. (said real estate and all of the above collectively referred to herein as the "Mortgaged Premises")

TO HAVE AND TO HOLD the Mortgaged Premises unto Mortgagee, its successors and assigns forever (Mortgagor hereby **RELEASING AND WAIVING** all rights under and by virtue of the homestead exemption laws of the State of Illinois and all rights or homestead created by the Federal Bankruptcy Code) provided, however, that if and when Mortgagor shall pay the principal and accrued interest on the Note and all other indebtedness hereby secured shall be paid in full and shall perform all of the terms, covenants and agreements contained herein, then this Mortgage shall be released upon the written request and expense of Mortgagor.

Mortgagor covenants that Mortgagor is lawfully seized of the real estate hereby conveyed and has the right to mortgage, grant and convey the Mortgaged Premises, that the Mortgaged Premises are unencumbered and that Mortgagor will warrant and defend generally the title to the Mortgaged Premises against all claims and demands, subject to any declarations, easements and restrictions listed in a schedule of exceptions to coverage in any title insurance policy insuring Mortgagor's interest in the Mortgaged Premises.

MORTGAGOR HEREBY FURTHER COVENANTS AND AGREES AS FOLLOWS:

1. Mortgagor hereby agrees: (a) to pay when due all indebtedness secured by this Mortgage, all interest thereon and all other indebtedness, obligations and liabilities which this Mortgage secures; (b) not to commit or permit to exist any waste of the Mortgaged Premises and to keep the Mortgaged Premises in good condition and repair; (c) to keep the Mortgaged Premises free of any mortgage, trust deed, mechanic's lien, or other lien or encumbrance; (d) not to suffer or permit unlawful use or any nuisance to exist upon the Mortgaged Premises; (e) not to remove or demolish any part of the improvements of a structural nature which would adversely affect the value of the Mortgaged Premises; (f) not to abandon the Mortgaged premises; (g) to pay when due any indebtedness or liability which may be secured by a mortgage, lien, other encumbrance or charge on all or any part of the Mortgaged premises equal or senior in priority to this Mortgage; (h) to complete within a reasonable time any buildings or improvements now or at any time in the process of erection upon the Mortgaged Premises; (i) immediately after destruction or damage to all or any part of the Mortgaged Premises to commence and promptly complete the rebuilding or restoration of buildings, improvements and all other property now or hereafter on the Mortgaged Premises unless Mortgagee elects to apply the proceeds of insurance to the indebtedness secured by this Mortgage as hereinafter provided; (j) to comply with all laws, regulations, rulings, ordinances, orders and all other requirements imposed by any governmental or other competent authority and with all restrictions, covenants and conditions relating to the Mortgaged Premises or to the use thereof; (k) not to make or permit, without first obtaining the written consent of the Mortgagee, the use of the Mortgaged Premises for any purpose other than that for which it was used on the date of this Mortgage or the removal, demolition or sale of any building, improvement, fixture, machinery or equipment now or hereafter upon the Mortgaged Premises; (l) to keep and maintain such books and records as required

Order # 219652

COOK COUNTY 93257212

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18. No consent or waiver, express or implied, by Mortgagee to or of any breach or delay by Mortgagor in the performance by Mortgagor of any obligations contained herein shall be deemed a consent to or waiver by Mortgagee of such performance in any other instance or any other obligation hereunder. The failure of Mortgagee to exercise either or both of its remedies to accelerate the maturity of the indebtedness secured hereby and/or to foreclose the lien hereof following any Event of Default hereunder, or to exercise any other remedy granted to Mortgagee hereunder or under applicable law in any one or more instances, or the acceptance by Mortgagee of partial payments of such indebtedness shall neither constitute a waiver of any such Event of Default or of Mortgagee's remedies hereunder or under applicable law nor establish, extend or affect any grace period for payments due under the Note, but such remedies shall remain continuously in force. Acceleration of maturity, once claimed hereunder by Mortgagee, may at Mortgagee's option be rescinded by written acknowledgment to that effect by Mortgagee and shall not affect Mortgagee's right to accelerate maturity upon or after any future Event of Default.

19. Mortgagor shall pay Mortgagee's costs and expenses, title charges, search fees, appraisal fees, recording fees, costs of survey, trust fees and attorneys' fees for negotiation, drafting, closing and protecting this Mortgagee and loan documents and for advice in connection therewith.

20. Mortgagee shall have the right to inspect the Mortgaged Premises at all reasonable times, and access thereto shall be permitted for that purpose.

21. Mortgagor represents and agrees that the proceeds of the Note will be used for business purposes and that Note and this Mortgage are exempt from limitations upon lawful interest, pursuant to the terms of the Illinois Revised Statutes, Chapter 17, Paragraph 6404.

22. All communications provided for herein shall be in writing and shall be deemed to have been given when delivered personally or three (3) business days after mailing by United States certified mail, return receipt requested, first class mail, postage prepaid, addressed to the parties hereto at their addresses as shown at the beginning of this Mortgage or to such other and different address as Mortgagor or Mortgagee may designate pursuant to a written notice sent in accordance with the provisions hereof.

23. This Mortgage shall be construed in accordance with and governed pursuant to the laws of the State of Illinois. Whenever possible, each provision of this Mortgage shall be interpreted in such a manner as to be effective and valid pursuant to applicable law; provided, however, that if any part hereof shall be prohibited by or invalid thereunder, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remaining provisions of this Mortgage.

24. Whenever any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party; and all the covenants, promises and agreements in this Mortgage contained by or on behalf of Mortgagor, or by or on behalf of Mortgagee, shall bind and inure to the benefit of the respective heirs, executors, administrators, successors, vendees and assigns of such parties, whether so expressed or not. In addition, all covenants, promises and agreements of Mortgagor herein shall be binding upon any other parties claiming any interest in the Mortgaged Premises under Mortgagor. If more than one party signs this instrument as Mortgagor, then the term "Mortgagor" as used herein shall mean all of such parties, jointly and severally. In addition, the term "Mortgagor" shall include all persons claiming under or through Mortgagor and all persons liable for the payment of the indebtedness or any part thereof, whether or not such persons shall have executed the Note or this Mortgage.

25. This Mortgage is executed by AM. NAT'L BANK & TRUST CO. OF CHICAGO, not personally, but solely as Trustee as aforesaid, in the exercise of the power and authority conferred upon and vested in it as such Trustee (and said Trustee hereby warrants that it possesses full power and authority to execute this instrument), and it is expressly understood and agreed that nothing herein or in the Note shall be construed as creating any liability on said Trustee personally to pay the Note or any interest that may accrue thereon, or any indebtedness accruing hereunder, or to perform any covenants, conditions and agreements herein or therein contained, either express or implied, all such liability, if any, being expressly waived by Mortgagee and every person now or hereafter claiming any right or security hereunder. Mortgagee further acknowledges and agrees that Mortgagee's sole recourse against Mortgagor shall be to proceed against the Mortgaged Premises and other property given as security for the payment of the Note and other indebtedness and obligations hereby secured, in the manner herein, in the Note and related loan documents and by law provided.

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

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

ATTEST
By: [Signature]
Title: Assistant Sec

By: [Signature]
Title: [Signature]

ACKNOWLEDGMENT

93257212

STATE OF ILLINOIS
COUNTY OF COOK

LAURA KUMINGO

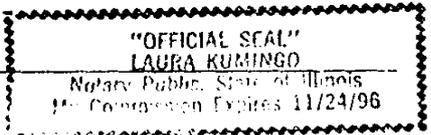
I, _____, a Notary Public in and for the said County,

In the State aforesaid, DO CERTIFY MICHAEL WILLIAMS Vice President and JUDITH B. CRAVEN ASSISTANT SECRETARY Secretary of said Trustee of American National Bank and Trust Company of Chicago and _____ who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such officers 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 Trustee as aforesaid, for the uses and purposes therein set forth; and the said Secretary then and there acknowledged that as custodian of the corporate seal of said Trustee (s)he affixed the seal as his/her own free and voluntary act and as the free and voluntary act of said Trustee as aforesaid, for the uses and purposes therein set forth.

Given under my hand and notarial seal this APR 01 1993 day of _____

[Signature]
Notary Public

My Commission Expires:



MAIL TO:
SPALTER FINANCE CO.
8831-33 Gross Point Road
Skokie, Illinois 60077

12. This Mortgage shall constitute a security agreement between Mortgagee and Mortgagor with respect to that portion of the Mortgaged Premises consisting property or interests in property, whether real or personal, including any and all sums deposited by Mortgagor and held by Mortgagor which are subject to the priority and partition provisions of the Illinois Uniform Commercial Code. Therefore, to secure payment of the Mortgage and all other indebtedness and obligations of Mortgagor hereunder, Mortgagor hereby grants to Mortgagee a security interest in the Mortgaged Premises and in all such deposits and agrees that, upon an Event of Default, Mortgagee shall have all of the rights and remedies of a secured party under the Illinois Uniform Commercial Code.

13. Mortgagor shall not and will not apply for or avail itself of any appraisal, valuation, stay, extension or exemption laws, or any so-called "moratorium laws" now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but does hereby waive the benefit of such laws. MORTGAGOR EXPRESSLY WAIVES ALL RIGHTS OF REDEMPTION UNDER ANY JUDICIAL OR DECREE OF FORECLOSURE OF THIS MORTGAGE, ON ITS OWN BEHALF, ON BEHALF OF THE BENEFICIARIES OF MORTGAGE, ON BEHALF OF ALL PERSONS CLAIMING OR HAVING AN INTEREST (DIRECT OR INDIRECT) BY, THROUGH OR UNDER MORTGAGE, AND ON BEHALF OF EACH AND EVERY PERSON ACQUIRING ANY INTEREST IN OR TITLE TO THE MORTGAGED PREMISES SUBSEQUENT TO THE DATE HEREOF, IT BEING THE INTENT OF MORTGAGOR HEREBY THAT ANY AND ALL SUCH RIGHTS OF REDEMPTION OF MORTGAGOR AND OF ALL OTHER PERSONS ARE AND SHALL BE DEEMED TO BE HEREBY WAIVED TO THE FULL EXTENT PERMITTED BY APPLICABLE LAWS.

14. This Mortgage shall secure, in addition to all other indebtedness and obligations herein recited, any loss, liability, penalty, damage or judgment including reasonable attorneys' fees incurred by Mortgagee by reason of any actual or alleged violation of any applicable statute, ordinance, rule or regulation for the protection of the environment which occurs upon the Mortgaged Premises or any adjoining parcels or by reason of imposition of any governmental lien for the recovery of environmental cleanup costs expended by reason of such violation (collectively "Environmental Costs").

15. Any one or more of the following shall constitute an event of default ("Event of Default"), hereunder: (a) default in the payment, when due, (b) whether by lapse of time, acceleration or otherwise) of the principal of or interest on the Note or of any other indebtedness hereby secured, (c) default for more than 30 days in observance or compliance with any other covenant, warranty, term or provision of this Mortgage or of any separate assignment of leases and/or rents securing the Note or of any other instrument or document securing the Note or relating thereto; (d) any representation or warranty made by Mortgagor herein or by Mortgagee or Maker in any separate assignment of leases and/or rents securing the Note or in any other instrument or document securing the Note or relating thereto; (e) the Mortgaged Premises are voluntarily or involuntarily, by operation of law or otherwise, except for sales or otherwise, worn out or unuseable fixtures or personal property which are concurrently replaced with other fixtures or personal property at least equal in quality and condition to those sold and owned by Mortgagor free of any lien, charge or encumbrance other than the lien hereof; (f) any indebtedness secured by a lien or charge on the Mortgaged Premises or any part thereof is not paid when due or proceedings are commenced to foreclose or otherwise realize upon any such lien or charge or to have a receiver appointed for the property subject thereto or to place the holder of such indebtedness or its representative in possession thereof; (g) Mortgagor, Guarantor or Maker becomes insolvent or bankrupt or admits in writing its, his or her inability to pay its, his or her debts as they mature or makes an assignment of assets for the benefit of creditors or applies for or consents to the appointment of a trustee, custodian or receiver for the major part of its, his or her property or such a trustee, custodian or receiver is appointed for Mortgagor, Guarantor or Maker, or for the major part of the properties of any of them and is not discharged within 30 days after such appointment, or bankruptcy, reorganization, arrangement, novation, liquidation, dissolution or other proceedings for relief under any present or future bankruptcy laws or laws or other state, law or regulation for the relief of debtors are instituted by or against Mortgagor, Guarantor or Maker, and if instituted against such party are consented to or acquiesced in or are not dismissed within 30 days after such institution, or Mortgagor, Guarantor or Maker takes any action in contemplation of or furtherance of any of the foregoing; (h) there shall be any execution, attachment or levy on the Mortgaged Premises not stayed or released within 30 days; (i) any event occurs or condition exists which is specified as an event of default in any separate assignment of leases and/or rents securing the Note or in any other instrument or document securing the Note or relating thereto; (j) any financial or other information submitted by Maker or Guarantor to Mortgagee pursuant to any material respect; (k) the Mortgaged Premises are abandoned, industrial wastes, pollution control wastes or toxic substances, within the meaning of any applicable Federal, state or local environmental statute, ordinance, rule or regulation (collectively "Hazardous Substances"), which are installed, used, generated, manufactured, produced, stored, released, discharged or disposed of on, under or about the Mortgaged Premises, or transported to or from the Mortgaged Premises, in violation of any Federal, state or local environmental statute, ordinance, rule or regulation, or in violation of any Federal, state or local environmental statute, ordinance, rule or regulation up and down the coast of cleaning up all Hazardous Substances on, under or about the Mortgaged Premises within 60 days after their discovery, or after receipt from any governmental agency or any other governmental entity or authority that a violation of any applicable Federal, state or local environmental statute, ordinance, rule or regulation has occurred; or (l) or a bankruptcy proceeding shall be filed by or against any Beneficiary of Mortgagor and shall not be dismissed within sixty (60) days after the filing thereof.

16. When any Event of Default has occurred and is continuing (regardless of the pendency of any proceeding which has or might have the effect of preventing Mortgagor from complying with the terms of this instrument and of the adequacy of the security for the Note) and in addition to such other rights as may be available under applicable law, but subject at all times to any mandatory legal requirements: (a) Mortgagee may, by written notice to Mortgagor, declare the Note and all unpaid indebtedness of Mortgagor hereby secured, including any interest then accrued thereon, to be forthwith due and payable, whereupon the same shall become and be forthwith due and payable, without other notice or demand of any kind; (b) Mortgagee shall, with respect to any part of the Mortgaged Premises constituting property of the type in respect of which real estate on a lien or security interest granted therein is governed by the Illinois Uniform Commercial Code, have all the rights, options and remedies of a secured party under the Illinois Uniform Commercial Code; (c) Mortgagee may proceed to protect and enforce the rights of Mortgagee hereunder (i) by any action at law, suit in equity or other appropriate proceedings, whether for the specific performance of any agreement contained herein or for an injunction against the violation of any of the terms hereof, or in aid of the exercise of any power granted hereby or by law; or (ii) by the foreclosure of the Mortgage in any manner permitted by law; (d) Mortgagee shall, as a matter of right, without notice and without giving bond to Mortgagor or anyone claiming by, under or through it, and without regard to the solvency or insolvency of Mortgagor or the then value of the Mortgaged Premises, be entitled to have a receiver appointed of all or any part of the Mortgaged Premises and rents, issues and profits thereof, with such power as the court making such appointment shall confer, and Mortgagor hereby consents to the appointment of such receiver and shall not oppose any such appointment. Any such receiver may, to the extent permitted under applicable law, without notice, enter upon and take possession of the Mortgaged Premises or any part thereof by force, summary proceedings, ejectment or otherwise, and may remove, Mortgagee or other persons and any and all property therefrom, and may hold, operate and manage the same and receive all earnings, income, rents, issues and profits accruing with respect thereto, whether during the pendency of any foreclosure or until any right of redemption shall expire or otherwise; (e) Mortgagee may enter and take possession of the Mortgaged Premises or any part thereof and manage, operate and maintain the same, and to collect the rents, issues and profits thereon, in addition to all other rights or remedies of Mortgagee hereunder or afforded by law, and may be exercised concurrently therewith or independently thereof. The expense (including any receiver's fees, counsel fees, court and agent's compensation) incurred pursuant to the powers herein conferred shall be so much additional indebtedness hereby secured which Mortgagee promises to pay upon demand together with interest at the Default Rate applicable to the Note at the time such expenses are incurred. Mortgagee shall not be liable to account to Mortgagor for any action taken pursuant hereto other than to account for any rents actually received by Mortgagee. Without taking possession of the Mortgaged Premises, Mortgagee may, in the event the Mortgaged Premises becomes vacant or is abandoned, take such steps as it deems appropriate to protect and secure the Mortgaged Premises (including hiring watchmen thereon) and all costs incurred in so doing shall constitute so much additional indebtedness hereby secured payable upon demand with interest thereon at the Default Rate applicable to the Note at the time such costs are incurred.

17. All rights and remedies set forth in this Mortgage shall be subject to the provisions of the Illinois Uniform Commercial Code. Mortgagor shall not and will not apply for or avail itself of any appraisal, valuation, stay, extension or exemption laws, or any so-called "moratorium laws" now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but does hereby waive the benefit of such laws. MORTGAGOR EXPRESSLY WAIVES ALL RIGHTS OF REDEMPTION UNDER ANY JUDICIAL OR DECREE OF FORECLOSURE OF THIS MORTGAGE, ON ITS OWN BEHALF, ON BEHALF OF THE BENEFICIARIES OF MORTGAGE, ON BEHALF OF ALL PERSONS CLAIMING OR HAVING AN INTEREST (DIRECT OR INDIRECT) BY, THROUGH OR UNDER MORTGAGE, AND ON BEHALF OF EACH AND EVERY PERSON ACQUIRING ANY INTEREST IN OR TITLE TO THE MORTGAGED PREMISES SUBSEQUENT TO THE DATE HEREOF, IT BEING THE INTENT OF MORTGAGOR HEREBY THAT ANY AND ALL SUCH RIGHTS OF REDEMPTION OF MORTGAGOR AND OF ALL OTHER PERSONS ARE AND SHALL BE DEEMED TO BE HEREBY WAIVED TO THE FULL EXTENT PERMITTED BY APPLICABLE LAWS.

