

UNOFFICIAL COPY

9 3 3 6 4 9 7

FCA.MTGE
05.12.93

93366497

This Instrument Was Prepared By
(and after recording mail to)
Brian C. Shea
Baker & McKenzie
130 East Randolph Drive
Chicago, Illinois 60601



DEPT-11 RECORD.T 187.50
T00011 TRAN 2732 05/14/93 15:20:00
49573 \$ *-93-366497
COOK COUNTY RECORDER

7218832 DI

MORTGAGE AND SECURITY AGREEMENT

This Mortgage and Security Agreement made this 10th day of May, 1993, by American National Bank and Trust Company of Chicago, as Trustee under Trust Agreement dated March 24, 1993 and known as Trust Number 116762-02 ("Mortgagor") and whose address is 33 North LaSalle Street, Chicago, Illinois 60690 for the benefit of American National Bank and Trust Company of Chicago, having an office at 33 North LaSalle Street, Chicago, Illinois 60690 (hereinafter referred to as "Mortgagee");

WITNESSETH:

WHEREAS, Mortgagor is justly indebted to Mortgagee in the principal sum of Five Million Two Hundred Seventy Thousand and no/100 Dollars (\$5,270,000.00) as evidenced by a Line of Credit Mortgage Note dated even date herewith executed by Mortgagor, and made payable to the order of and delivered to Mortgagee in the principal amount of Five Million Two Hundred Seventy Thousand and no/100 Dollars (\$5,270,000.00) (hereinafter referred to as the "Note"), whereby Mortgagor promises to pay the said principal sum or so much thereof as may be advanced by the holder or holders of the Note from time to time, together with interest thereon, from date, at the rate set forth therein, in installments as set forth therein at the office of Mortgagee, or at such other place as may be designated in writing by the legal holders thereof until May 1, 1997 (the "Maturity Date") at which time the principal sum secured hereby and all accrued interest thereon shall immediately become due and payable;

NOW, THEREFORE, in order to secure the payment of the said principal sum and interest thereon and the performance of the covenants and agreements herein contained, Mortgagor does by these presents grant, bargain, sell, convey, and mortgage unto Mortgagee, its successors and assigns forever, the real estate and all of its estate, right, title, and interest therein situated in the City of Chicago, County of Cook and State of Illinois, as more particularly described in Exhibit "A" attached hereto and made a part hereof (sometimes herein referred to as the "real estate"), which real estate, together with the following described property, is collectively referred to as the "premises;"

93366497

87⁵⁰

UNOFFICIAL COPY

TOGETHER WITH:

(1) all right, title, and interest of Mortgagor, including any after-acquired title or reversion, in and to the beds of the ways, streets, avenues, vaults, and alleys adjoining the premises,

(2) all and singular the tenements, hereditaments, easements, minerals, appurtenances, passages, waters, water courses, riparian irrigation, and drainage rights, and other rights, liberties, and privileges thereof or in any way now or hereafter appertaining, including homestead and any other claim at law or in equity as well as any after-acquired title, franchise, or license and the reversion and reversions and remainder and remainders thereof,

(3) all of Mortgagor's interest and rights as lessor in and to all leases and subleases, whether written or verbal, now or hereafter affecting the real estate or any part thereof and all rents, issues, proceeds, and profits accruing and to accrue from the real estate, whether payable pursuant to any present or future lease or otherwise growing out of any occupancy or use of the premises or payable (which are pledged primarily and on a parity with the real estate, and not secondarily), and security deposits and avails thereof,

(4) all proceeds or sums payable in lieu of or as compensation for the loss of or damage to the premises, all rights in and to all present and future fire and other hazard insurance policies pertaining to the premises, any and all sums at any time on deposit for the benefit of Mortgagee or held by Mortgagee (whether deposited by or on behalf of Mortgagor or anyone else) pursuant to any of the provisions of this Mortgage, and, except as provided in the Lease (as defined in Section 4(a) hereof), all awards paid or to be paid in connection with or in lieu of any condemnation, eminent domain, change of grade or similar proceeding for the taking or for the degradation in the value of all or any part of the premises,

(5) all buildings and improvements of every kind and description now or hereafter erected or placed thereon and owned by Mortgagor and all materials owned by Mortgagor intended for construction, reconstruction, alteration, and repairs of such improvements now or hereafter erected thereon, all of which materials shall be deemed to be included within the premises immediately upon the delivery thereof to the premises, and all fixtures and personal property now or hereafter owned by Mortgagor and attached to or contained in and used in connection with the premises, including, but not limited to, all heating, air-conditioning, sprinklers, freezing, lighting, laundry, incinerating and dynamo and generating equipment; engines, pipes, pumps, tanks, motors, conduits, switchboards, plumbing and plumbing fixtures; lifting, cleaning, fire prevention, fire extinguishing, refrigerating, ventilating and communications apparatus; boilers, ranges, furnaces, oil burners or units thereof; appliances, air cooling and air-conditioning apparatus; vacuum cleaning systems; elevators, escalators; shades; awnings, screens; storm doors and windows; stoves, wall beds, refrigerators, cooking apparatus and mechanical equipment, gas and electrical fixtures; partitions, mantels, built-in mirrors, window shades, blinds, furniture of public spaces, halls and lobbies; attached cabinets, ducts and compressors; rugs and carpets; draperies; furniture and furnishings used in the

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

operations of the premises; and all additions thereto and renewals or replacements thereof or articles in substitution therefor, whether or not the same are or shall be attached to said building or buildings in any manner, it being mutually agreed, intended, and declared that all the aforesaid property shall, so far as permitted by law, be deemed to form a part and parcel of the real estate and for the purpose of this Mortgage to be real estate, and covered by this Mortgage, and as to any of the property aforesaid which does not so form a part and parcel of the real estate, this Mortgage is hereby deemed to be, and is, as well, a Security Agreement under the Uniform Commercial Code for the purpose of creating hereby a security interest in such property, which Mortgagor hereby grants to the Mortgagee as Secured Party (as such term is defined in the Uniform Commercial Code), it being further understood and agreed that the provisions of this paragraph shall not apply or attach to any trade fixtures or personal property of any tenant of the premises,

(6) all accounts, including, without limitation, all present and future rights of Mortgagor to payment for real estate sold or leased or for services rendered, which are not evidenced by instruments or chattel paper, and whether or not they have been earned by performance ("Accounts"), all contract rights and general intangibles, including, without limitation, all choses in action, causes of action and all other intangible personal property of Mortgagor of every kind and nature (other than Accounts), including, without limitation, corporate, partnership or other business records, computer software, blueprints, drawings, licenses, tax refunds, tax refund claims and the like, wherever located, and any letter of credit, guaranty, security interest or other security held by or granted to the Mortgagor to secure payment by an account debtor,

(7) all of Mortgagor's deposit accounts (general or special) with and credits and other claims against American National Bank and Trust Company of Chicago, or any other financial institution with which Mortgagor maintains deposits,

(8) all of Mortgagor's monies, and any and all property and interests in property of Mortgagor coming into the actual possession, custody or control of Mortgagee or any agent or affiliate of Mortgagee in any way or for any purpose (whether for safekeeping, deposit, custody, pledge, transmission, collection or otherwise),

(9) all chattel paper, instruments, notes, letters of credit, documents and documents of title,

(10) all insurance proceeds of or relating to any of the foregoing,

(11) all of Mortgagor's books and records relating to any of the foregoing, and

(12) with respect to all of the property described above, the rents, profits and leases thereof, the tenements, hereditaments, easements and appurtenances thereto and all accessions and additions to, substitutions for, and replacements, products and proceeds of any of the foregoing including without limitation, deposits, accounts, monies, instruments, securities, negotiable instruments and chattel paper in which those proceeds are invested or held;

UNOFFICIAL COPY

TO HAVE AND TO HOLD the same unto the Mortgagee and its successors and assigns forever, free from all rights and benefits under and by virtue of the Homestead Exemption Laws of the State of Illinois (which rights and benefits are hereby expressly released and waived), for the purposes and uses herein set forth;

PROVIDED, HOWEVER, that if the Mortgagor shall pay the principal and all interest as provided in the Note, and shall pay all other sums herein provided for, or secured hereby, and shall well and truly keep and perform all of the covenants herein contained, then this Mortgage shall be released at the cost of the Mortgagor, otherwise to remain in full force and effect; and provided further that the maximum aggregate amount secured by this Mortgage including principal, interest, future advances, if any, and all other sums herein provided for (whether now owed or hereinafter owed) is \$10,540,000.00.

MORTGAGOR REPRESENTS AND WARRANTS TO MORTGAGEE that:

(a) Title. Mortgagor has good and marketable title to the real estate described as Parcel 1 and Parcel 2 on Exhibit A and either Mortgagor or its beneficial owner owns good and marketable title to all of the other property comprising part of the premises, other than property owned by the Tenant (as defined in Section 4(a) hereof) under the Lease or other tenants of the premises from time to time, subject to no mortgage, lien, pledge, charge, security interest or other incumbrance or adverse claim of any nature except Permitted Encumbrances (as hereinafter defined), and Mortgagor has full power and lawful authority to grant, bargain, sell, convey, warrant, assign, transfer, pledge, grant a security interest in, set over, confirm and mortgage unto Mortgagee, and its successors and assigns, the premises as herein provided. Mortgagor will forever preserve, warrant and defend the title to the premises and validity and first priority of the lien of estate, and the security interest, created hereby against the claims and demands of all persons whomsoever. Mortgagor agrees that it will take such actions as are necessary (including all actions reasonably required of it by Mortgagee) to perfect, protect and maintain the mortgage lien and security interest priority of this Mortgage. As used herein the term "Permitted Encumbrances" means (i) the easements, rights of way and other exceptions set forth in Schedule B of the title policy insuring the lien of this Mortgage and (ii) any impositions or mechanic's claims which are not due and payable or are being contested in good faith at the time pursuant to and in compliance with the requirements of Section 36 hereof. Mortgagor hereby indemnifies, protects and holds Mortgagee harmless of and from and agrees to defend Mortgagee against any and all loss, cost or damage (including reasonable attorneys' fees and expenses) which Mortgagee may incur by reason of any breach or inaccuracy in any of the representations, warranties, covenants, agreements and indemnities set forth in this section.

(b) Hazardous Substances. Except as previously disclosed to Mortgagee as described in Schedule 1 attached hereto, neither the Mortgagor nor any other person within Mortgagor's knowledge, based upon reasonable investigation, has ever caused or permitted any Hazardous Substances (as hereinafter defined) to be placed, held, located or disposed of on, under or at the premises or any part thereof, neither the premises nor any part thereof has ever

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

been used by Mortgagor, or by any other person within Mortgagor's knowledge, based on reasonable investigation, as a dump site or storage site for, and, to the best knowledge of Mortgagor, after reasonable investigation, neither the premises nor any part thereof contains any hazardous wastes, hazardous substances, hazardous materials, toxic substances, hazardous air pollutants or toxic pollutants, as those terms are used in the Resource Conservation and Recovery Act (42 USC § 6901, et seq.), the Comprehensive Environmental Response, Compensation and Liability Act (42 USC § 9601, et seq.), the Hazardous Materials Transportation Act (49 USC § 1802, et seq.), the Toxic Substances Control Act (15 USC § 2601, et seq.), the Clean Air Act (42 USC § 7401, et seq.), the Refuse Act (33 USC § 407, et seq.), the National Environmental Policy Act (42 USC § 4231, et seq.), the Indoor Radon Abatement Act (P.L. 100-551), the Safe Drinking Water Act (42 USC § 300[f], et seq.), and the Clean Water Act (33 USC § 1251, et seq.), or in any regulations promulgating pursuant thereto, or in any other applicable Law (collectively "Hazardous Substances") and no Hazardous Substances shall be generated, released, stored, buried or deposited over, beneath, in or on the premises. As used herein the term "Law" means any law, constitution, statute, treaty, regulation, rule, ordinance, order, injunction, writ, decree or award of any Official Body, including those relating to zoning, subdivision, building, safety, fire protection or environmental matters. As used herein the term "Official Body" means any government or political subdivision or any agency, authority, bureau, central bank, commission, department or instrumentality of either, or any court, tribunal, grand jury or arbitrator, in each case whether foreign or domestic. Mortgagor hereby indemnifies, protects and holds Mortgagee harmless of and from and agrees to defend Mortgagee against any and all loss, cost or damage (including reasonable attorneys' fees and expenses) which Mortgagee may incur by reason of any breach or inaccuracy in any of the representations, warranties, covenants, agreements and indemnities set forth in this section.

(c) Compliance With Laws. To the best knowledge of Mortgagor, the premises are now used and operated in full compliance with all applicable federal, state and local laws, ordinances and regulations in any way related to the premises for the use and operation thereof. Except as heretofore disclosed by Mortgagor to Mortgagee in writing, Mortgagor has no knowledge of any public health, environmental or other land-use action or proceeding, either instituted or threatened, and which would or might detrimentally affect the use or operation of the premises or adversely affect the value thereof. All public health and environmental permits, licenses and authorizations required by law, ordinance or regulation, if any, in connection with the present or future use or operation of the premises have been or will be obtained in a timely manner by Mortgagor, or Mortgagor will cause any lessees claiming by, through or under Mortgagor to obtain same, and Mortgagor, and all lessees claiming by, through or under Mortgagor, at all times hereafter will be in full compliance with all requirements of all such permits, licenses, authorities, laws, regulations and ordinances. Mortgagor agrees, with respect to the construction, operation and leasing of the premises, that persons otherwise entitled to any right, benefit, facility or privilege shall not be denied such right, benefit, facility or privilege in any manner for any purpose nor be discriminated against on the basis of race, religion, marital status, age, color, sex, handicap, national origin or ancestry. Mortgagor hereby indemnifies, protects and hold Mortgagee harmless of and from and agrees to defend Mortgagee against any and all loss, cost or damage (including reasonable attorneys' fees and expenses)

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

which Mortgagee may incur by reason of any breach or inaccuracy in any of the representations, warranties, covenants, agreements and indemnities set forth in this section.

(d) Americans with Disabilities Act. To the best knowledge of Mortgagor, the premises are in full compliance with the Americans with Disabilities Act (the "AD Act"). Mortgagor hereby covenants and agrees not to permit, commit or suffer to exist any condition of which it has knowledge which is likely to result in a violation of the AD Act, and if such condition should occur, to promptly remedy or cause any lessees claiming by, through or under Mortgagor to remedy, any such condition. Mortgagor hereby indemnifies, protects and holds Mortgagee harmless of and from and agrees to defend Mortgagee against any and all loss, cost or damage (including reasonable attorneys' fees and expenses) which Mortgagee may incur by reason of any breach or inaccuracy in any of the representations, warranties, covenants, agreements and indemnities set forth in this section.

MORTGAGOR FURTHER COVENANTS and agrees as follows:

1. Payment of Principal and Interest. Mortgagor shall pay promptly when due the principal and interest on the indebtedness evidenced by the Note at the times and in the manner herein and in the Note provided.

2. Tax and Insurance Deposits. Mortgagor shall deposit with the Mortgagee, or a depository designated by Mortgagee, in addition to the monthly installments of principal and interest due under the terms of the Note, and concurrently therewith, monthly until the principal indebtedness evidenced by the Note is paid, the following: (i) a sum equal to one-twelfth (1/12) of the annual real estate taxes and assessments ("taxes") on the premises (all as estimated by Mortgagee in its reasonable discretion), and (ii) a sum equal to one-twelfth (1/12) of the amount of the premium or premiums due annually to replace or renew the insurance policies required to be maintained by Section 4 hereof (all as estimated by Mortgagee in its reasonable discretion). In addition to such monthly deposits, Mortgagor shall maintain a reserve with Mortgagee equal to at least two months of such monthly payments for taxes and premiums such that upon payment of taxes and premiums two months of deposits remain in reserve. All such payments described in this Section 2 shall be held by Mortgagee or a depository designated by Mortgagee in trust without accruing or without any obligation arising for the payment of interest thereon. If the funds so deposited are insufficient to pay, when due, all taxes and premiums as aforesaid, the Mortgagor shall, within ten (10) days after receipt of demand therefor from Mortgagee or its agent, deposit such additional funds as may be necessary to pay such taxes and premiums. If the funds so deposited exceed the amounts required to pay such items, the excess shall be applied on a subsequent deposit or deposits. Neither the Mortgagee nor depository shall be liable for any failure to make the payments of insurance premiums, or of taxes, unless Mortgagor, while not in default hereunder, shall have requested said Mortgagee or depository in writing to make application of such deposits to the payment of the particular insurance premium or taxes, accompanied by the bills for such insurance premiums or taxes, provided, however, Mortgagee may at its option make or cause the depository to make any such application of the aforesaid deposits without any direction or request to do same by Mortgagor.

UNOFFICIAL COPY

Mortgagee may suspend, in whole or in part, and later reinstate, the application of this Section as often as it may determine. Notwithstanding anything to the contrary contained in this Section 2, Mortgagor shall not be required to comply with the above obligations unless and until Mortgagee delivers written notice to Mortgagor to do so.

3. Taxes and Other Charges. Mortgagor shall timely pay, when due and owing, all general taxes, special taxes, sales taxes (other than those payable by any tenant under any lease permitted hereunder), permits and inspection fees, occupation and license fees, special assessments, water charges, sewer service charges, association charges, and all other charges of whatever kind, ordinary or extraordinary, whether public or private, which may be levied or imposed against the ownership, use, occupancy or operation of the premises or any part thereof, or any property acquired by Mortgagor in substitution for, as a renewal or replacement of, or a modification, improvement or addition to the premises, or any part thereof, and to furnish to Mortgagee official receipts for the payment of real estate taxes within thirty (30) days after payment thereof, provided, however, if Mortgagee has not suspended the monthly deposits for taxes required by Section 2 hereof, Mortgagee, at its option, either may make such deposits available to Mortgagor for the payments required under this Section 3, or may make such payments on behalf of Mortgagor. Mortgagor shall pay when due all charges incurred for the benefit of the premises for utilities, such as, but not limited to, energy, fuel, gas, electricity, water, sewer, and garbage removal, whether or not such charges are liens against the premises.

4. Insurance.

(a) Casualty. Mortgagor shall keep the improvements now existing or hereafter erected on the premises constantly insured against loss or damage under such types and forms of insurance policies and in such amounts and for such periods as Mortgagee may from time to time require, and Mortgagor shall pay promptly, when due, any premiums on such insurance, provided, however, that if the Mortgagee has not suspended the monthly deposits for insurance required by Section 2 hereof, Mortgagee, at its option, either may make such deposits available to Mortgagor for the payments required under this Subsection 4(a), or may make such payments on behalf of Mortgagor. Unless Mortgagee otherwise agrees, all such insurance shall provide "all risk" agreed value replacement cost coverage (and during the process of constructing or reconstructing any improvements on the premises such coverage shall be pursuant to a builders risk, completed value, non-reporting form of policy) and such insurance shall be carried with companies acceptable to the Mortgagee and shall have attached thereto standard noncontributing mortgage clauses in favor of and entitling the Mortgagee alone to collect any and all of the proceeds payable under all such insurance, as well as standard waiver of subrogation endorsements. Mortgagor shall not carry separate insurance, concurrent in kind or form and contributing in the event of loss, with any insurance required hereunder. In the event of a change in ownership of the premises (if approved in writing by Mortgagee), immediate notice thereof by mail shall be delivered to all insurers. In the event of any loss for less than \$25,000.00 which is covered by such insurance, Mortgagor shall immediately notify Mortgagee in writing and Mortgagor shall use the insurance proceeds to repair and restore the improvements in which event Mortgagee shall not be obliged to see to the proper application thereof nor shall the amount so released or used for restoration be deemed a payment on the

93266497

UNOFFICIAL COPY

indebtedness secured hereby. In the event of any loss for \$25,000.00 or more which is covered by such insurance, Mortgagor shall immediately notify Mortgagee in writing, and Mortgagor hereby authorizes and directs each and every insurance company concerned to make payments for such loss directly and solely to Mortgagee (who may, but need not, make proof of loss) and Mortgagee is hereby authorized to adjust, collect, and compromise in its discretion all claims under all policies, and Mortgagor shall sign, upon demand by Mortgagee, all receipts, vouchers, and releases required by such insurance companies. After deducting any costs of collection, Mortgagee may use or apply the proceeds, at its option, (i) as a credit upon any portion of the indebtedness secured hereby, except that this option shall not be exercised if Mortgagor is not in default hereunder and Mortgagor demonstrates to Mortgagee's reasonable satisfaction that said proceeds, together with such other funds as are available to Mortgagor for such purpose, are sufficient in amount to fully pay for the restoration of the damaged improvements or (ii) to repairing and restoring the improvements in which event Mortgagee shall not be obliged to see to the proper application thereof nor shall the amount so released or used for restoration be deemed a payment on the indebtedness secured hereby, or (iii) to deliver same to Mortgagor. In the event Mortgagee shall elect to apply such proceeds to restoring the improvements, such proceeds shall be made available, from time to time, upon Mortgagee being furnished with satisfactory evidence of the estimated cost of such restoration and with such architect's certificates, waivers of lien, contractors' sworn statements and other evidence of cost and of payments as Mortgagee may reasonably require and approve, and if the estimated cost of the work exceeds ten percent (10%) of the original principal amount of the indebtedness secured hereby, then Mortgagor shall furnish Mortgagee with all plans and specifications for such rebuilding or restoration as Mortgagee may reasonably require and approve. No payment made prior to the final completion of the work shall exceed ninety percent (90%) of the value of the work performed, from time to time, and at all times the undisbursed balance of said proceeds remaining in the hands of Mortgagee shall be at least sufficient to pay for the cost of completion of the work, free and clear of any liens. In the event of foreclosure of this Mortgage, or other transfer of title to the premises in extinguishment of the indebtedness secured hereby, all right, title, and interest of Mortgagor, in and to any insurance policies then in force, and any claims or proceeds thereunder shall pass to Mortgagee or any purchaser or grantee. In the event Mortgagee, in its reasonable discretion, determines that any insurance provided by Mortgagor does not comply with the insurance requirements set forth herein, then Mortgagee may, at any time and at its own discretion, after notice to Mortgagor and the failure by Mortgagor to comply with said requirements for a period of greater than five (5) days, procure and substitute for any and all of the insurance so held as aforesaid, such other policy or policies of insurance, in such amount and carried in such company as it may reasonably determine, the cost of which shall be repaid to Mortgagee by Mortgagor after notice by Mortgagee to Mortgagor of the exercise of such right. Mortgagor shall furnish to Mortgagee, upon its request, estimates or appraisals of insurable value, without cost to the Mortgagee, such as are regularly and ordinarily made by insurance companies to determine the then replacement cost of the building or buildings and improvements on the premises. Anything to the contrary contained in this subparagraph 4(a) notwithstanding, and only with respect to that portion of the premises subject to that certain lease agreement dated May 10, 1993 by and between Circuit City Stores, Inc. ("Tenant") and Mortgagor, a certified copy of which has previously been delivered to and approved by Mortgagee (the "Lease"), Mortgagor shall not be required to comply with the requirements

93060197

UNOFFICIAL COPY

contained in this subparagraph provided that (i) Mortgagor has not commenced the exercise of any remedy against any tenant under the Lease in connection with a default or event of default under the Lease, (ii) the tenant under the Lease continues to maintain all insurance as required thereunder, and (iii) all policies of insurance required under the Lease shall name Mortgagee as an additional insured party thereunder and shall include a lender's loss payee endorsement in form and substance acceptable to Mortgagee.

(b) **Liability.** Mortgagor shall carry and maintain in force at all times commercial general liability insurance as may be reasonably required from time to time by Mortgagee in forms, amounts, and with companies reasonably satisfactory to Mortgagee, and Mortgagor will apply all insurance proceeds under such policies to the payment and discharge of the liabilities in respect of which such proceeds are collected. It is understood and agreed that the amounts of coverage shall not be less than Five Million and No/100 Dollars (\$5,000,000.00) and that the policy shall name Mortgagee as an additional insured party thereunder.

(c) **Workmen's Compensation.** Mortgagor shall, or shall cause tenants (or tenants' contractors) under any leases, or Mortgagor's contractors, as the case may be, to carry and maintain in force at all times during the making of any alterations or improvements to the premises: (i) insurance covering claims based upon owner's contingent liability not covered by the insurance provided in paragraph (b) above, and (ii) Workmen's Compensation insurance covering all persons in making such alterations or improvements, both of which types of insurance to be in amounts the greater of (i) as is customarily carried by like organizations engaged in like activities of comparable size and liability exposure, and (ii) as required by law.

(d) [INTENTIONALLY OMITTED.]

(e) **Flood Insurance.** Mortgagor shall carry and maintain in force at all times flood insurance in accordance with the provisions of the Flood Disaster Protection Act of 1973, as amended, if the area in which the premises are situated is designated as "flood prone" or a "flood risk area", as defined in said act, or if required by the National Flood Insurance Act, as amended, in the amount of the indebtedness secured hereby, and Mortgagor shall comply with such other requirements of said acts as are appropriate. The parties hereto acknowledge that, at the present time, no such insurance is required.

(f) **Rental Insurance.** Mortgagor shall carry and maintain in full force at all times rental insurance to cover twelve (12) months' rental income from the premises in form and of content, in amounts, and with companies satisfactory to Mortgagee; provided, however, Mortgagor shall not be required to maintain said insurance with respect to any particular lease in the event that such lease provides for the tenant thereunder to continue making full payments of rent and other charges due thereunder in the event of any casualty.

(g) **Policies.** Unless Mortgagee otherwise agrees, all policies of insurance required hereunder to be maintained by Mortgagor, or certificate thereof in form and substance reasonably acceptable to Mortgagee, shall be deposited with Mortgagee and shall provide for, among other things, written notice to Mortgagee of their expiration or any anticipated

UNOFFICIAL COPY

cancellation at least thirty (30) days prior to such event occurring. Not less than thirty (30) days prior to the expiration of any such policy, Mortgagor shall deposit an appropriate renewal or replacement policy or certificate, as the case may be.

(h) Survey; Title Insurance; Documents to be Furnished at or Prior to Closing.

Prior to the delivery of this Mortgage, Mortgagor shall deliver to the Mortgagee at Mortgagor's sole cost and expense, a current survey of the real estate prepared in accordance with American Land Title Association standards for a class A survey and a commitment for an American Land Title Association loan policy of title insurance (1970 Form B or 1990 Form with affirmative coverage over the bankruptcy/creditors rights exclusion) without exceptions, except Permitted Encumbrances, and with extended coverage, including without limitation, a comprehensive endorsement, a 3.1 zoning (including parking) endorsement, an access endorsement, a contiguity endorsement, a variable rate endorsement, a usury and truth in lending endorsement, an interim mechanics' liens endorsement and any other endorsements reasonably required by Mortgagee, in respect of the real estate, issued by a nationally recognized title insurer acceptable to the Mortgagee in an amount at least equal to the indebtedness secured hereby, insuring the Mortgagee as its interest may appear that the Mortgage is a first, prior and paramount lien upon the real estate. Such policy shall insure the fee simple title to the real estate in Mortgagor, subject to this Mortgage but subject to no additional or prior liens, encumbrances or clouds of title other than Permitted Encumbrances. All net proceeds of claims made under said policy shall be paid to the Mortgagee as its respective interest may appear. Said survey shall show all buildings and improvements located thereon, location of all parking spaces, all easements and all encroachments onto or from any adjoining property, access to a dedicated public highway or street and a flood plain certification, certified as having been prepared in accordance with all American Land Title Association standards and certified in favor of the Mortgagee and the title insurer, in form and detail reasonably acceptable to the Mortgagee.

5. Preservation, Restoration and Use of Premises. Mortgagor shall, or shall cause applicable tenants under leases to, complete, within a reasonable time, any building or buildings or other improvements now or at any time in the process of being constructed upon the real estate. No building or other improvement on the premises shall (except as required by law) be altered, removed, or demolished nor shall any fixtures or appliances on, in or about said buildings or improvements be severed, removed, sold or mortgaged, without the prior written consent of Mortgagee, and in the event of the demolition or destruction in whole or in part of any of the fixtures, chattels, or articles of personal property covered hereby or by any separate security agreement given in conjunction herewith, the same shall be replaced promptly by similar fixtures, chattels, and articles of personal property at least equal in quality and condition to those replaced, free from any security interest in or encumbrances thereon or reservation of title thereto. Subject to the provisions of Section 4 hereof, Mortgagor shall promptly repair, restore, or rebuild any buildings or improvements now or hereafter on the premises which may become damaged or be destroyed. The buildings and improvements shall be so restored or rebuilt so as to be of at least equal value and substantially the same character as prior to such damage or destruction. Mortgagor shall not permit, commit, or suffer any waste, impairment, or deterioration of the premises or any part or improvement thereof, and shall keep and maintain the premises and every part thereof in good repair and condition and effect such repairs as

Mortgagee may reasonably require, and, from time to time, make all needful and proper replacements and additions thereto so that said buildings, fixtures, machinery, and appurtenances will, at all times, be in good condition, fit and proper for the respective purposes for which they were originally erected or installed. Mortgagor shall not suffer or permit the premises to be abandoned (subject to the terms and provisions of the Lease) or to be used for a purpose other than for commercial/retail purposes, all subject to local zoning laws. Mortgagor shall not subject the premises to any use covenants or restrictions except as provided in the Lease and, except as provided in the Lease, shall not initiate, join in or consent to any change in any existing private restrictive covenant, zoning ordinance, or other public or private restriction limiting or defining the uses which may be made of or the kind of improvements which can be constructed or placed on the premises or any part thereof, and shall promptly notify Mortgagee of, and appear in and defend, at its sole cost and expense, any such proceedings seeking to effect any of the foregoing. Mortgagor shall not subdivide the real estate and shall not subject the premises to the provisions of the condominium laws of the state in which the premises are situated. No improvement on the real estate or on land adjoining the real estate which is owned or controlled by Mortgagor shall be constructed unless plans and specifications therefor have been first submitted to Mortgagee and approved by it, in the exercise of its reasonable judgment, as entailing no material prejudice to the loan secured hereby or the security therefor. Mortgagor shall not cause or permit the person, firm or other entity responsible for the management of the premises (the "Property Manager") to be changed without Mortgagee's prior written consent, which consent shall not be unreasonably withheld or delayed, provided, however, that it shall not be deemed unreasonable if Mortgagee requires as a condition to giving such consent that the proposed Property Manager fully subordinate to the lien of this Mortgage, or at Mortgagee's election, waive, any lien for past, present or prospective services to which said Property Manager might otherwise be entitled by reason of Section 1 of the Act relating to contractors' and materialmen's liens, known as mechanics' liens, as amended (770 ILCS 60/1).

6. Compliance with Governmental, Insurance and Other Requirements. Mortgagor shall comply with all statutes, ordinances, orders, requirements, or decrees relating to the premises or the use thereof of any federal, state, or municipal authority, including without limitation, all Laws, and shall observe and comply with all conditions and requirements necessary to maintain in force the insurance required under Section 4 hereof and to preserve and extend any and all rights, licenses, permits (including, but not limited to, zoning variances, special exceptions, and nonconforming uses) privileges, franchises, and concessions which are applicable to the premises or which have been granted to or contracted for by Mortgagor in connection with any existing or presently contemplated use of the premises. In the event that any building or other improvement on the premises must be altered or removed to enable Mortgagor to comply with the foregoing provisions of this Section 6, Mortgagor shall not commence any such alterations or removals without Mortgagee's prior approval of the need therefor and the plans and specifications pertaining thereto. After such approval, which shall not be unreasonably withheld or delayed, Mortgagor, at its sole cost and expense, shall effect the alterations or removal so required and approved by Mortgagee. Mortgagor shall not by act or omission permit any building or other improvement on land not subject to the lien of this Mortgage to rely on the premises or any part thereof or any interest therein to fulfill any municipal or governmental requirement, and Mortgagor hereby assigns to Mortgagee any and

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

all rights to give consent for all or any portion of the premises or any interest therein to be so used. Similarly, no building or other improvement on the premises shall rely on any land not subject to the lien of this Mortgage or any interest therein to fulfill any governmental or municipal requirement. Mortgagor shall not by act or omission impair the integrity of either Parcel 1 or Parcel 2, each as a single zoning lot separate and apart from all other premises. Any act or omission by Mortgagor which would result in a violation of any of the provisions of this Section shall be void. Mortgagor shall duly and punctually perform and comply with all covenants and conditions expressed as binding upon it under any recorded document or any other agreement of any nature whatsoever binding upon it which pertains to the premises.

7. Liens, Encumbrances and Transfers of Ownership.

(a) Liens and Encumbrances. Subject to Section 36 hereof, Mortgagor shall keep the premises free from liens of mechanics and materialmen and from all other liens, charges, and encumbrances of whatever nature, regardless of (i) whether the same arise voluntarily or involuntarily on the part of Mortgagor and (ii) whether the same are subordinate to, prior to, or on a parity with the lien of this Mortgage, and shall furnish to Mortgagee satisfactory evidence of the payment and discharge of any such liens, charges, and encumbrances, asserted or claimed to exist against the premises, and any other lien or encumbrance expressly consented to by Mortgagee and with respect to any such second mortgage or other permitted encumbrance, Mortgagor shall pay, when due, the indebtedness secured thereby and upon Mortgagee's request, furnish to Mortgagee satisfactory evidence of such payment or payments. Without in any way limiting Mortgagee's right to withhold its consent to Mortgagor hereafter granting or creating a lien against all or any part of the premises which is subordinate to the lien hereof, and regardless of whether or not expressed in such consent or in the document granting such subordinate lien: (i) any lien for which such consent is given shall be subject and subordinate to all leases pertaining to the premises whether then in existence or thereafter arising, and further subject to any and all renewals, extensions, modifications, releases, increases, changes or exchanges pertaining to the indebtedness secured hereby, without the consent of such subordinate lien holder and without any obligation to give notice of any kind thereto and (ii) any consent to any such subordinate lien shall be subject to the conditions that in accepting the grant of such subordinate lien, the grantee thereof, in consideration of such consent thereto, shall be deemed to have agreed to indemnify and hold Mortgagee harmless from and against all "Recovery Costs" (hereinafter defined) pertaining to or arising out of any attempt ("Recovery Attempt") by the Beneficial Owner (as described in paragraph 33 hereto), individually or as a debtor in possession, a trustee in bankruptcy of the estate of the Beneficial Owner, or any other creditor of Mortgagor or such Beneficial Owner to recover from Mortgagee, pursuant to any one or more provisions of the United States Bankruptcy Code (such as, but not limited to, Sections 547(b) and 550(a)) or any other federal or state law all or any portion of any payment or payments made by or on behalf of Mortgagor or such Beneficial Owner to Mortgagee. As used herein the term "Recovery Costs" means all liabilities, judgments, and penalties imposed on Mortgagee and arising out of or resulting from any Recovery Attempt, and all costs and expenses, including, but not limited to, attorneys' fees, incurred by Mortgagee in dealing with any Recovery Attempt and/or defending any action brought thereon, which obligations shall

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

survive the payment in full of all amounts secured hereby and may be described in any release deed Mortgagee is obligated to deliver in accordance with the provisions of its mortgage.

(b) Ownership Transfers. Except as hereinafter provided, Mortgagor shall not sell, transfer, convey, encumber, or assign the title to all or any portion of the premises, or the rents, issues, or profits therefrom, whether by operation of law, voluntarily, or otherwise, and shall not contract to do any of the foregoing (any such sale, transfer, conveyance, encumbrance, assignment or agreement to do any of the foregoing being herein referred to as an "Ownership Transfer"). Mortgagor acknowledges and agrees that ownership of the beneficial interest in the trust of which Mortgagor is trustee by, and the power of direction thereunder being vested in, the person or persons presently comprising the Beneficial Owner for as long as the indebtedness secured hereby remains unpaid has been a material consideration to Mortgagee in extending the credit to Mortgagor evidenced by the Note. Accordingly, Mortgagor, and by directing Mortgagor to execute this Mortgage, the Beneficial Owner, each agree that the Beneficial Owner shall not transfer or assign all or any portion of such beneficial interest, or the rents, issues, or profits from the premises (including, without being limited to, a collateral assignment), whether by operation of law, voluntarily or otherwise, and shall not contract to do any of the foregoing, (any such change, transfer, assignment or agreement to do so also being herein referred to as an "Ownership Transfer"), provided, however, that (i) anything in Section 24(b)(iv) to the contrary notwithstanding, Mortgagee shall have no right to enjoin or otherwise prohibit any Ownership Transfer, whether by Mortgagor or the Beneficial Owner, and, (ii) Mortgagee's rights and remedy in the event of any default hereunder resulting from any such Ownership Transfer shall be to declare the indebtedness evidenced hereby to be immediately due and payable, as specified in Section 24(b)(i), and in the absence of payment upon such acceleration to pursue such other remedies as are specified in Section 24 hereof. Notwithstanding anything to the contrary contained in this Section 7(b), the foregoing prohibition respecting Ownership Transfer shall not be applicable with respect to any transfers of the beneficial ownership of the Trust, or any interests therein, by and among any of Tennis Corporation of America, a Delaware corporation, or any shareholder thereof, Columbia Equities Limited Partnership, an Illinois limited partnership, or any partners thereof, or AGS I, Inc., an Illinois corporation, or any shareholders thereof.

8. Stamp, Recording, Franchise and Other Taxes. If at any time the United States government or any state, or municipal government shall require Internal Revenue or other documentary stamps hereon or on the Note secured hereby, or shall otherwise impose a tax (including but not limited to any franchise, transfer, recording or filing tax or fee) or impose an assessment on this Mortgage or on the Note or shall require payment of an interest equalization tax upon the indebtedness secured hereby, then the said indebtedness and the accrued interest thereon shall be and become due and payable at the election of Mortgagee thirty (30) days after the mailing of notice of such election to Mortgagor, provided, however, said election shall be unavailing and this Mortgage and the Note shall be and remain in effect, if Mortgagor lawfully may pay for such stamps or such tax including interest and penalties (other than interest or penalties by reason of Mortgagee having failed to timely advise Mortgagor of any amount due) thereon to or on behalf of Mortgagee and Mortgagor does in fact pay, when payable, for all such stamps or such tax, as the case may be, including interest and penalties

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

thereon (other than interest or penalties by reason of Mortgagee having failed to timely advise Mortgagor of any amount due).

9. Effect of Change in Laws Regarding Taxation. In the event of the enactment, after the date of this Mortgage, of any law of the state in which the premises are located imposing upon Mortgagee the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or Mortgagee's interest in the property, or the manner of collection of taxes, so as to affect this Mortgage or the debt secured hereby or the holder thereof, then, and in any such event, Mortgagor, upon demand by Mortgagee, shall pay such taxes or assessments, or reimburse Mortgagee therefor; provided, however, that if, in the opinion of counsel for Mortgagee, (i) it might be unlawful to require Mortgagor to make such payment or (ii) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then, and in such event, Mortgagee may elect, by notice in writing given to Mortgagor, to declare all of the indebtedness secured hereby to be and become due and payable within thirty (30) days from the giving of such notice. Notwithstanding the foregoing, Mortgagor shall not be obligated to pay any portion of Mortgagee's federal or state income tax, franchise tax or other similar business tax.

10. Mortgagee's Performance of Defaulted Acts. Subject to Section 36 hereof, in the case of any Material Default (as defined in Section 24(a) hereof), Mortgagee may, but need not, make any payment or perform any act herein required of Mortgagor in any form and manner reasonably deemed expedient by Mortgagee. By way of illustration and not in limitation of the foregoing, Mortgagee may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise, or settle any tax lien or other prior or junior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting the premises or contest any tax or assessment. If a Material Default has occurred, Mortgagee is hereby authorized to make or advance, in the place and stead of the Mortgagor, any payment relating to taxes, assessments, water rates, sewer rentals, and other governmental or municipal charges, fines, impositions, or liens asserted against the premises and may do so according to any bill, statement, or estimate procured from the appropriate public office without inquiry into the accuracy of the bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien, or title or claim thereof; and the Mortgagee is further authorized to make or advance in the place and stead of the Mortgagor any payment relating to any apparent or threatened adverse title, lien, statement of lien, encumbrance, claim, or charge, or payment otherwise relating to any other purpose herein and hereby authorized, but not enumerated in this Section, and may do so whenever, in its reasonable judgment and discretion, such advance or advances shall seem necessary or desirable to protect the full security intended to be created by this instrument, and in connection with any such advance, Mortgagee, at its option, may and is hereby authorized to obtain a continuation report of title or title insurance policy prepared by a title insurance company of Mortgagee's choosing. All monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including reasonable attorney's fees, and any other monies advanced by Mortgagee to protect the premises and the lien hereof, shall be so much additional indebtedness secured hereby, and shall become immediately due and payable by Mortgagor to Mortgagee

10
11
12
13
14
15
16
17

UNOFFICIAL COPY

without notice and with interest thereon at the Default Interest Rate. Inaction of Mortgagee shall never be considered as a waiver of any right accruing to it on account of any default on the part of Mortgagor.

11. Eminent Domain. Mortgagee is hereby authorized to collect and receive from the condemnation authorities any and all awards heretofore or hereafter made or to be made to the present and all subsequent owners of the premises, by any governmental or other lawful authority for taking, by condemnation or eminent domain, hereby assigned by Mortgagor to Mortgagee, as aforesaid, and Mortgagee is hereby authorized to give appropriate receipts and acquittances therefor. Mortgagor shall give Mortgagee prompt notice of the actual or threatened commencement of any such proceedings under condemnation or eminent domain, affecting all or any part of the said premises or any easement therein or appurtenance thereof, including severance and consequential damage and change in grade of streets, and will deliver to Mortgagee copies of any and all papers served in connection with any such proceedings. Mortgagor shall make, execute, and deliver to Mortgagee, at any time or times upon request, free, clear, and discharged of any encumbrances of any kind whatsoever, any and all further assignments and instruments deemed necessary by Mortgagee for the purpose of validly and sufficiently assigning to Mortgagee all awards and other compensation heretofore and hereafter to be made to Mortgagor for any taking, either permanent or temporary, under any such proceeding. Except as provided in the Lease as respecting partial condemnation or taking, the proceeds of all such awards shall be paid to Mortgagee and may be applied by Mortgagee, at its option, after the payment of all of its expenses in connection with such proceedings, including costs and reasonable attorneys' fees, to the reduction of the indebtedness secured hereby or to restoring the improvements, in which event the same shall be paid out in the same manner as is provided, with respect to insurance proceeds, in Section 4(a) hereof. Proceeds of any condemnation award paid to and held by Mortgagee for purposes of paying for restoration shall be held in a money market (or then comparable) interest bearing account. Any property purchased with condemnation proceeds shall be made subject to the lien of this Mortgage subject to no liens or encumbrances other than the Permitted Encumbrances.

12. Acknowledgment of Debt. Mortgagor shall furnish from time to time within ten (10) days after Mortgagee's request, a written statement, duly acknowledged, verifying the amount due upon this Mortgage (as reflected on the books and records of Mortgagee, unless Mortgagor reasonably believes such books and records to be in error, in which event Mortgagor's statement shall so state Mortgagor's belief) and whether any alleged offsets or defenses exist against the indebtedness secured by this Mortgage.

13. Rents and Leases.

(a) Mortgagee's Right of Prior Approval. Mortgagor shall not, without Mortgagee's prior written consent, which consent shall not be unreasonably withheld, (i) execute an assignment or pledge of any rents of the premises or of any lease of all or any part of the premises, except as security for the indebtedness secured hereby, or (ii) agree to any amendment to or change in the terms of the Lease which substantially reduces the rent payable thereunder or materially increases any risk or liability of the lessor thereunder.

92266997

UNOFFICIAL COPY

(b) Mortgagor's Obligations. Mortgagor, without any cost and expense to Mortgagee, shall, or shall cause a Beneficial Owner to (i) at all times promptly and faithfully abide by, discharge and perform all of the covenants, conditions and agreements contained in all leases of all or any part of the premises, on the part of the landlord thereunder to be kept and performed, (ii) enforce or secure the performance of all of the covenants, conditions and agreements of such leases on the part of the lessees to be kept and performed, (iii) appear in and defend any action or proceeding arising under, growing out of or in any manner connected with such leases or the obligations, duties or liabilities of landlord or of the lessees thereunder, (iv) transfer and assign (for collateral purposes) to Mortgagee upon request of Mortgagee, any lease or leases of all or any part of the premises heretofore or hereafter entered into, and make, execute and deliver to Mortgagee upon demand, any and all instruments required to effectuate said assignment, (v) furnish Mortgagee, within ten (10) days after a request by Mortgagee so to do, a written statement containing the names of all lessees, terms of all leases, including the spaces occupied, and the rentals payable thereunder, and (vi) exercise within five (5) days of any demand therefor by Mortgagee any right to request from the lessee under any lease of all or any part of the premises a certificate with respect to the status thereof. Mortgagee shall have the option to declare this Mortgage in default (upon notice to Mortgagor and an opportunity to cure as provided in Section 24 hereof) because of a default of landlord in any lease of all or any part of the premises (i) if such default is not cured by Mortgagor within the time period provided for in said lease, or (ii) if such default is cured by Mortgagee pursuant to the right granted herein, that is after the notice and cure period provided above in this sentence. Any default under any separate Assignment of Lessor's Interest in Leases or under any Assignment of Rents given as additional security for the indebtedness secured hereby shall constitute a default hereunder on account of which the whole of the indebtedness secured hereby shall at the option of the Mortgagee, become immediately due and payable without notice to the Mortgagor.

(c) Mortgagee Exoneration. Nothing in this Mortgage or in any other documents relating to the loan secured hereby shall be construed to obligate Mortgagee, expressly or by implication, to perform any of the covenants of Mortgagor or any Beneficial Owner, as landlord, tenant or assignor, under any of the leases assigned to Mortgagee or to pay any sum of money or damages therein provided to be paid by the landlord or landlord's assignee, each and all of which covenants and payments Mortgagor agrees to perform and pay.

(d) Lessee Attornment. In the event of the enforcement by Mortgagee of the remedies provided for by law or by this Mortgage, the lessee under each lease of all or any part of the premises made after the date of recording this Mortgage shall, at the option of the Mortgagee, attorn to any person succeeding to the interest of Mortgagor or Beneficial Owner, as the case may be, as a result of such enforcement and shall recognize such successor in interest as landlord under such lease without change in the terms or other provisions thereof, provided, however, that said successor in interest shall not be bound by any payment of rent or additional rent for more than one month in advance or any amendment or modification to any lease made without the prior consent of Mortgagee or said successor in interest, except as otherwise specified in Section 13(a)(ii) hereof. Each lessee, upon request by Mortgagee or any such successor in interest, shall execute and deliver an instrument or instruments confirming

UNOFFICIAL COPY

such attornment, and Mortgagor shall cause each such lease of all or any part of the premises to contain a covenant on the lessee's part evidencing its agreement to such attornment.

(e) Declaration of Subordination. At the option of Mortgagee, this Mortgage shall become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to insurance proceeds or any award in condemnation) to any and all leases of all or any part of the premises upon the execution by Mortgagee and recording thereof, at any time hereafter, in the Office of the Recorder of Deeds in and for the county wherein the premises are situated, of a unilateral declaration to that effect.

14. Inspection of Premises. Mortgagor shall permit Mortgagee or its agents to inspect the premises at all reasonable times, and access thereto shall be permitted for such purpose, subject to the provisions of the Lease (except that in emergency situations, access shall be permitted without consideration of the Lease).

15. Inspection of Books and Records. Mortgagor shall keep and maintain full and correct records showing in detail the income and expenses of the premises and within ten (10) days after demand therefor shall allow Mortgagee to examine such books and records and all supporting vouchers and data at any reasonable time and from time to time on prior request at its offices, hereinbefore identified, or at such other location as may be mutually agreed upon and Mortgagor shall deliver to Mortgagee within thirty (30) days after demand therefor annual operating statements certified by Beneficial Owner (but, with respect to annual operating statements for the immediately preceding year, such demand shall not be made earlier than one-hundred twenty (120) days following the close of the applicable annual operating period). In addition to other remedies available to Mortgagee, Mortgagor's failure to comply with this provision shall result in a five hundred dollar (\$500.00) charge due from Mortgagor to Mortgagee. Mortgagor shall furnish to Mortgagee with reasonable promptness such other financial and other information respecting the financial condition, business or operations of Beneficial Owner or any guarantors as Mortgagee may from time to time reasonably request.

16. Future Advances. Mortgagee may, at its option upon request of Mortgagor, at any time before full payment of the indebtedness secured by this Mortgage, make further advances to Mortgagor, and the same, regardless of whether the amount thereof when added to the then principal balance due under the Note exceeds the face amount thereof, together with the interest thereon shall be on a parity with, and not subordinate to, the indebtedness evidenced by the Note and shall be secured hereby in accordance with all covenants and agreements herein contained. If Mortgagee shall make further advances as aforesaid, Mortgagor shall repay all such advances in accordance with the note or notes, or agreement or agreements, evidencing the same which Mortgagor shall have executed and delivered to Mortgagee, if any, and in the absence of any such agreement, the same shall be payable, together with interest thereon at the rate and at the intervals specified in the Note, in full on the Maturity Date.

17. Purpose of Loan. The entire proceeds of the loan evidenced by the Note are from a "business loan", as that term is used in 815 ILCS 205/4, and Mortgagor's beneficiaries own and operate a "business" as that term is defined in said 815 ILCS 205/4.

UNOFFICIAL COPY

18. Partial Invalidity. Mortgagor and Mortgagee intend and believe that each provision in this Mortgage and the Note comports with all applicable local, state and federal laws and judicial decisions. However, if any provision or provisions, or if any portion of any provision or provisions, in this Mortgage or the Note is found by a court of law to be in violation of any applicable local, state or federal ordinance, statute, law, administrative or judicial decision, or public policy, and if such court should declare such portion, provision or provisions of this Mortgage or the Note to be illegal, invalid, unlawful, void or unenforceable as written, then it is the intent both of Mortgagor and Mortgagee that such portion, provision or provisions shall be given force to the fullest possible extent that it or they are legal, valid and enforceable, that the remainder of this Mortgage and the Note shall be construed as if such illegal, invalid, unlawful, void or unenforceable portion, provision or provisions were not contained therein, and that the rights, obligations and interest of Mortgagor and Mortgagee under the remainder of this Mortgage and the Note shall continue in full force and effect. If under the circumstances interest in excess of the limit allowable by law shall have been paid by Mortgagor in connection with the loan evidenced by the Note, such excess shall be applied by Mortgagee to the unpaid principal balance of the Note or refunded to Mortgagor in the manner to be determined by Mortgagee and if any such excess interest has accrued, Mortgagee shall eliminate such excess interest so that under no circumstances shall interest on the loan evidenced by the Note exceed the maximum rate allowed by the law.

19. Subrogation. In the event the proceeds of the loan made by Mortgagee to Mortgagor, or any part thereof, or any amount paid out or advanced by Mortgagee, be used directly or indirectly to pay off, discharge, or satisfy, in whole or in part, any prior lien or encumbrance upon the premises or any part thereof, then Mortgagee shall be subrogated to such other lien or encumbrance and to any additional security held by the holder thereof and shall have the benefit of the priority of all of same.

20. Mortgagee's Right to Deal with Transferee. In the event of the voluntary sale, or transfer by operation of law, or otherwise, of all or any part of said premises, Mortgagee is hereby authorized and empowered to deal with such vendee or transferee with reference to said premises, or the debt secured hereby, or with reference to any of the terms or conditions hereof, as fully and to the same extent as it might with Mortgagor, without in any way releasing or discharging Mortgagor from said Mortgagor's covenants and undertakings hereunder, specifically including Section 7 hereof, and without Mortgagee waiving its right to accelerate the Note as set forth in said Section 7.

21. Execution of Security Agreement and Financing Statement. Mortgagor, within ten (10) days after request by mail, shall execute, acknowledge, and deliver to Mortgagee a Security Agreement, Financing Statement, or other similar security instrument, in form reasonably satisfactory to Mortgagee, covering all property, of any kind whatsoever owned by Mortgagor, which, in the sole opinion of Mortgagee, is essential to the operation of the premises and concerning which there may be any doubt as to whether the title to same has been conveyed by or a security interest therein perfected by this Mortgage under the laws of the State of Illinois and shall further execute, acknowledge, and deliver any financing statement, affidavit, continuation statement, or certificate or other documents as Mortgagee may reasonably request

UNOFFICIAL COPY

in order to perfect, preserve, maintain, continue, and extend the security instrument. Mortgagor further agrees to pay to Mortgagee, within ten (10) days following written demand, all reasonable costs and expenses incurred by Mortgagee in connection with the preparation, execution, recording, filing, and refiling of any such document. To the extent that this instrument may operate as a security agreement under the Uniform Commercial Code, Mortgagee shall have all rights and remedies conferred therein for the benefit of a Secured Party (as said term is defined in the Uniform Commercial Code).

22. Releases. Mortgagee, without notice, and without regard to the consideration, if any, paid therefor, and notwithstanding the existence at that time of any inferior liens, may release any part of the premises or any person liable for any indebtedness secured hereby, without in any way affecting the liability of any party to the Note and this Mortgage or guaranty, if any, given as additional security for the indebtedness secured hereby and without in any way affecting the priority of the lien of this Mortgage, and may agree with any party obligated on said indebtedness herein to extend the time for payment of any part or all of the indebtedness secured hereby. Such agreement shall not, in any way, release or impair the lien created by this Mortgage, or reduce or modify the liability, if any, of any person or entity personally obligated for the indebtedness secured hereby, but shall extend the lien hereof as against the title of all parties having any interest in said security which interest is subject to the indebtedness secured by this Mortgage.

23. Expenses Incurred by Mortgagee. Any costs, damages, expenses or fees, including reasonable attorney's fees, incurred by Mortgagee in connection with (i) sustaining the lien of this Mortgage or its priority, (ii) obtaining any commitment for title insurance or title insurance policy, (iii) obtaining an ALTA survey of the real estate, (iv) obtaining an MAI appraisal and one or more environmental reports, (v) the preparation, execution, delivery and performance of this Mortgage, the Note and any other documents in connection with the transactions contemplated hereby and thereby, (vi) any amendments, waivers or consents hereto or thereto, (vii) protecting the premises to the extent reasonably required to do so, (viii) protecting or enforcing any of Mortgagee's rights hereunder, (ix) recovering any indebtedness secured hereby, (x) any litigation or proceedings (including, but not limited to, bankruptcy, probate and administrative law proceedings) affecting this Mortgage, the Note, or the premises, or (xi) preparing for the commencement, defense or participation in any threatened litigation or proceedings as aforesaid, or as otherwise enumerated in Section 24(c) hereof, shall be so much additional indebtedness secured hereby and shall be immediately due and payable by Mortgagor, upon demand, with interest thereon after such demand at the Prime Rate (as defined in the Note); provided, however, that in the event that Mortgagee brings an action or proceeding against Mortgagor in connection with the enforcement of any or all of Mortgagee's remedies hereunder, and such action is dismissed in favor of Mortgagor on all counts, then Mortgagor shall not be liable for Mortgagee's costs and expenses in connection with such action, and; further provided, however, the interest rate applicable for amounts due Mortgagee in connection with clauses (i), (viii), (ix), (x) and (xi) shall be the Default Interest Rate.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

24. Remedies on Default

(a) Material Default. The occurrence or existence of any one of the following events or conditions (each of which is hereinafter referred to as a "Material Default") shall entitle Mortgagee to the remedies therefor hereinafter specified:

(i) a default in the payment when due of any amount payable hereunder which shall not have been cured, by the payment of said amount within ten (10) days after written notice of such default is given to Mortgagor, or a default in the full and timely performance of, or compliance with, any other obligation, covenant, condition or requirement specified herein, which shall not have been cured, by the performance so required, and the remediation of any consequences the delay in such performance may have caused, within twenty (20) days after written notice of such default is given to Mortgagor, or, provided Mortgagor has commenced action to cure such default within said twenty (20) day period and is diligently proceeding to complete such cure, then within such longer period, not exceeding an additional one hundred sixty (160) days, as may reasonably be required for any such default which cannot reasonably be cured within such twenty (20) days, provided, however, any default shall be deemed a Material Default upon the occurrence thereof (with notice but for which no cure period shall be available to Mortgagor) if such default is the third (3rd) to occur within any period of twelve (12) consecutive months, regardless of whether the same or different defaults are involved and notwithstanding that Mortgagor may have cured within any applicable cure period any previous defaults occurring within such twelve (12) month period;

(ii) a default shall have occurred under the loan commitment dated April 22, 1993 (and accepted April 24, 1993) and all amendments thereto (if any) between Alan Schwartz, Steven Schwartz (it being specifically agreed by Mortgagee, however, that neither Alan Schwartz nor Steven Schwartz shall have any personal liability thereunder, hereunder or under any Other Loan Documents for or in connection with the loan contemplated hereby and thereby; and further agreed that upon closing of the loan contemplated as aforesaid, Mortgagor shall, as of the date thereof, have complied with and shall not be deemed in default under such loan commitment) and Mortgagee, the Note or any other documents given as security for or to guarantee payment of the obligations secured hereby, (the loan commitment and such other documents are collectively referred to as the "Other Loan Documents") which (not having been cured within the time, and in the manner specified in the document under which the default occurred) entitles Mortgagee to the remedies therefor specified in such document;

(iii) any representation or warranty made by Mortgagor in the Note, this Mortgage, any of the Other Loan Documents or in any other agreement, instrument, certificate or statement contemplated hereby or thereby or made or delivered pursuant hereto or thereto or in connection herewith or therewith, shall be materially breached or violated, or prove to be false, misleading or inaccurate, in any material and adverse respect to Mortgagee or the security for the loan contemplated hereby;

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

(iv) [INTENTIONALLY DELETED]

(v) Mortgagor, any Beneficial Owner, any general partner of any Beneficial Owner, or any guarantor of the obligations secured hereby, shall at any time file a voluntary petition in bankruptcy, institute (by petition, application, answer, consent or otherwise) any bankruptcy, insolvency, reorganization, arrangement, composition, readjustment, dissolution, liquidation or similar proceedings under any present or future federal or state law, or admit in writing his, her or its inability to pay his, her or its debts as they mature, or make an assignment for the benefit of his, her or its creditors, or seek or consent to the appointment of any receiver, trustee or similar officer of all or any substantial part of his, her or its property;

(vi) the commencement of any involuntary petition in bankruptcy against Mortgagor, any Beneficial Owner, any general partner of any Beneficial Owner, or any guarantor of the obligations secured hereby, or the institution against one or more of the foregoing, of any reorganization, arrangement, composition, readjustment, dissolution, liquidation or similar proceedings under any present or future federal or state law, or the appointment of a receiver, trustee or other officer for all or any substantial part of the property of any such party which shall remain undismissed or undischarged for a period of sixty (60) days after the commencement thereof;

(vii) any attachment, seizure or levy shall be made in whole or in part upon the premises or any other collateral described in any of the Other Loan Documents, and the same shall not have been dismissed, released or removed within thirty (30) days thereafter;

(viii) a default by landlord under any lease of all or any portion of the premises, which default has not been cured by any applicable grace period contained in such lease; or

(ix) a default, after allowing for any applicable notice and cure period provided for, under any other loan made or participated in by Mortgagee or any participants in the loan evidenced by the Note (the "Loan") in which Mortgagor, any Beneficial Owner, any general partner of any Beneficial Owner, or any guarantor of the Loan is the borrower or guarantor or beneficiary of the borrower in said other loan.

(b) **Remedies.** In addition to any other remedy herein specified, if any Material Default under this Mortgage shall occur, Mortgagee may, at its option, (i) declare the entire indebtedness secured hereby to be immediately due and payable, without notice or demand (each of which is hereby expressly waived by Mortgagor) whereupon the same shall become immediately due and payable, (ii) institute proceedings for the complete foreclosure of this Mortgage, (iii) institute proceedings to collect any delinquent installment or installments of the indebtedness secured hereby without accelerating the due date of the entire indebtedness, by

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

proceeding with foreclosure of this Mortgage with respect to any delinquent installment or installments of such indebtedness only, and any sale of the premises under such a foreclosure proceeding shall be subject to and shall not affect the unmatured part of the indebtedness, and this Mortgage shall be and continue as a lien on the premises securing the unmatured indebtedness, (iv) take such steps to protect and enforce its rights whether by action, suit or proceeding in equity or at law for the specific performance of any covenant, condition or agreement in the Note or in this Mortgage, or in any of the Other Loan Documents, or in aid of the execution of any power herein granted, or for any foreclosure hereunder, or for the enforcement of any other appropriate legal or equitable remedy or otherwise as Mortgagee shall elect, (v) recover judgment on the Note or any guarantee either before, during or after or in lieu of any proceedings for the enforcement of this Mortgage, (vi) exercise any or all of the rights and remedies available to a secured party under the Uniform Commercial Code, or (vii) enforce this Mortgage in any other manner permitted under the laws of the state in which the premises are situated.

(c) Expense of Litigation. In any suit to foreclose the lien of this Mortgage or enforce any other remedy of Mortgagee under this Mortgage or the Note there shall be allowed and included, as additional indebtedness in the judgment or decree, all expenditures and expenses which may be reasonably paid or incurred by or on behalf of Mortgagee for reasonable attorneys' fees, appraiser's fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, survey costs, and costs (which may be reasonably estimated as to items to be expended after entry of the decree) of procuring all abstracts of title, title searches and examinations, title insurance policies, Torrens certificates, and similar data and assurances with respect to title as Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or value of the premises.

(d) Mortgagee's Right of Possession in Case of Default. In any case in which, under the provisions of this Mortgage, Mortgagee has a right to institute foreclosure proceedings whether or not the entire principal sum secured hereby is declared to be immediately due as aforesaid, or whether before or after the institution of legal proceedings to foreclose the lien hereof or before or after sale thereunder, forthwith, upon demand of Mortgagee, Mortgagor shall surrender to Mortgagee and Mortgagee shall be entitled to take actual possession of the premises, or any part thereof, personally or by its agent or attorneys, and Mortgagee in its discretion may enter upon and take and maintain possession of all or any part of said premises, together with all documents, books, records, papers, and accounts of Mortgagor or the then manager of the premises relating thereto, and may exclude Mortgagor, its agents, or servants, wholly therefrom and may, as attorney in fact or agent of Mortgagor, or in its own name as Mortgagee and under the powers herein granted: (i) hold, operate, manage, and control the premises and conduct the business, if any, thereof, either personally or by its agents, and with full power to use such measures, legal or equitable, as in its reasonable discretion or in the reasonable discretion of its successors or assigns may be deemed proper or necessary to enforce the payment or security of the avails, rents, issues and profits of the premises including actions for recovery of rent, actions in forcible detainer and actions in distress for rent, hereby granting full power and authority to exercise each and every of the rights, privileges and powers herein

93366497

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

granted at any and all times hereafter, without notice to Mortgagor, (ii) cancel or terminate any lease or sublease for any cause or on any ground which would entitle Mortgagor to cancel the same, (iii) elect to disaffirm any lease or sublease made subsequent to this Mortgage or subordinated to the lien hereof, (iv) extend or modify any then existing leases and make new leases, which extensions, modifications and new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the indebtedness hereunder and the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor and all persons whose interests in the premises are subject to the lien hereof and to be also binding upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the mortgage indebtedness, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any purchaser, (v) make all necessary or proper repairs, decorating, renewals, replacements, alterations, additions, betterments, and improvements to the premises as to Mortgagor may reasonably seem judicious, (vi) insure and reinsure the premises and all risks incidental to Mortgagor's possession, operation, and management thereof, and (vii) receive all avails, rents, issues and profits.

(e) Application of Final Proceeds. Any avails, rents, issues and profits of the premises received by Mortgagee after having possession of the premises, or pursuant to any assignment thereof to Mortgagee under the provisions of this Mortgage or of any separate Assignment of Rents or Assignment of Leases, shall be applied in payment of or on account of the following, in such order as Mortgagee (or in case of a receivership, as the court) may determine: (i) to the payment of the operating expenses of the premises, including reasonable compensation to Mortgagee or the receiver and its agent or agents, if management of the premises has been delegated to an agent or agents, and shall also include reasonable lease commissions and other compensation and expenses of seeking and procuring tenants and entering into leases and the payment of premiums on insurance hereinabove authorized, (ii) to the payment of taxes, special assessments, and water taxes now due or which may hereafter become due on the premises, or which may become a lien prior to the lien of this Mortgage, (iii) to the payment of all repairs, decorating, renewals, replacements, alterations, additions, betterments, and improvements of said premises, including the cost from time to time of installing or replacing personal property or fixtures necessary to the operation of the premises, and of placing said property in such condition as will, in the reasonable judgment of Mortgagee or receiver, make the premises readily rentable, (iv) to the payment of any indebtedness secured hereby or any deficiency which may result from any foreclosure sale, or (v) with respect to any overplus or remaining funds, to the Mortgagor, its successors, or assigns, as their rights may appear.

(f) Appointment of Receiver. Upon or at any time after the filing of any complaint to foreclose this Mortgage, Mortgagor consents upon application by Mortgagee to the appointment of a receiver of the premises. Such appointment may be made either before or after sale without notice and without regard to the solvency or insolvency, at the time of application for such receiver, of the person or persons, if any, liable for the payment of the indebtedness secured hereby and without regard to the then value of the premises or whether the same shall be then occupied as a homestead or not, and without bond being required of the

UNOFFICIAL COPY

applicant. Such receiver shall have the power to take possession, control, and care of the premises and to collect the rents, issues, and profits of the premises during the pendency of such foreclosure suit and, in case of a sale and a deficiency, during the full statutory period of redemption (provided that the period of redemption has not been waived by Mortgagor), as well as during any further times when Mortgagor, its heirs, administrators, executors, successors, or assigns, except for the intervention of such receiver, would be entitled to collect such rents, issues, and profits, and all other powers which may be necessary or are useful in such cases for the protection, possession, control, management, and operation of the premises, during the whole of said period. To the extent permitted by law, said receiver may be authorized by the court to extend or modify any then existing leases and to make new leases, which extensions, modifications, and new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the indebtedness hereunder it being understood and agreed that any such leases and the options or other such provisions to be contained therein shall be binding upon Mortgagor and all persons whose interests in the premises are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the mortgage indebtedness, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any purchaser.

(g) Sale of Premises. Any real estate or any interest or estate therein sold pursuant to any court order or decree obtained pursuant to the Mortgage shall be sold in one parcel, as an entirety, or in such parcels and in such manner or order as Mortgagee, in its sole discretion, may elect, to the maximum extent permitted by the laws of the state in which the premises are situated. At any such sale, Mortgagee may bid for and acquire, as Purchaser, the premises or any part thereof, and in lieu of paying cash therefor, may make settlement for the purchase price by crediting upon the indebtedness due the amount of Mortgagee's bid.

(h) Application of Proceeds From Foreclosure Sale. The proceeds of any foreclosure sale of the premises shall be distributed and applied in the following order of priority: (i) on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in Section 24(c) hereof, (ii) all other items which, under the terms hereof, constitute secured indebtedness additional to that evidenced by the Note, with interest thereon, at the Default Interest Rate from and after the time in default as to such item, (iii) all principal and interest remaining unpaid on the Note, and (iv) any overplus to Mortgagor, its successors, or assigns, as their rights may appear.

(i) Application of Deposits Held by Mortgagee. With respect to any deposits made with or held by Mortgagee or any depository pursuant to any of the provisions of this Mortgage, in the event of a Material Default under in this Mortgage, Mortgagee may, at its option, without being required to do so, apply any monies or securities which constitute such deposits on any of Mortgagor's obligations herein or in the Note contained, in such order and manner as Mortgagee may elect. When the indebtedness secured hereby has been fully paid, any remaining deposits shall be paid to Mortgagor or to the then owner or owners of the premises. Such deposits are hereby pledged as additional security for the prompt payment of the Note and any other indebtedness hereunder and shall be held to be irrevocably applied by the depository

UNOFFICIAL COPY

for the purposes for which made hereunder and shall not be subject to the direction or control of the Mortgagor.

(j) Waiver of Statutory Rights. Mortgagor, for itself and on behalf of the trust estate, all persons beneficially interested therein, and each and every person acquiring any interest in or title to the premises subsequent to the date hereof, agrees not to apply for or avail itself of any appraisal, valuation, reinstatement, redemption, 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, and hereby waives the benefits of such laws, including, but not limited to, those specified in subsections 15-1602 and 15-1603 of the Illinois Mortgage Foreclosure Law, and further waives any and all right to have the property and estates comprising the premises marshalled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the premises sold as an entirety. Mortgagor acknowledges and agrees that the land covered by this Mortgage at the time of execution hereof is neither "Agricultural Real Estate" nor "Residential Real Estate" (as those terms are defined in the Illinois Mortgage Foreclosure Law). Mortgagor warrants that it has been authorized, by the trust instrument pursuant to which Mortgagor acts as trustee or by the persons having a power of direction over Mortgagor, to waive Mortgagor's right of reinstatement and redemption, as aforesaid. Mortgagor hereby waives and releases all errors, defects and imperfections in any proceedings instituted by Mortgagee under this Mortgage.

(k) Partial Payments. Acceptance by Mortgagee of any payment which is less than payment in full of all amounts due and payable at the time of such payment shall not constitute a waiver of Mortgagee's right to demand payment of the balance due, or any other rights of the Mortgagee at that time or any subsequent time.

(l) Tender of Payment After Acceleration. In case, after legal proceedings are instituted to foreclose the lien of this Mortgage, tender is made of the entire indebtedness due hereunder, Mortgagee shall be entitled to reimbursement for expenses incurred in connection with such legal proceedings, including such expenditures as are enumerated above, and such expenses shall be so much additional indebtedness secured by this Mortgage, and no such suit or proceedings shall be dismissed or otherwise disposed of until such fees, expenses, and charges shall have been paid in full.

(m) Delays and Omissions. No course of dealing and no delay in the exercise of or failure to exercise any remedy or right accruing by reason of any default under this Mortgage shall impair any such remedy or right or be construed to be a waiver of any such default or acquiescence therein, nor shall it affect any subsequent default of the same or of a different nature.

(n) Rescission of Election. Acceleration of maturity, once made by Mortgagee, may at the option of Mortgagee be rescinded, and any proceedings brought to enforce any rights or remedies hereunder may, at Mortgagee's option, be discontinued or dismissed, whereupon, in either of such events, Mortgagor and Mortgagee shall be restored to their former positions,

UNOFFICIAL COPY

and the rights, remedies and power of Mortgagee shall continue as if such acceleration had not been made or such proceedings had not been commenced, as the case may be.

(o) **Remedies Cumulative and Concurrent.** The rights and remedies of Mortgagee as provided in the Note, in this Mortgage, in any guaranty of any guarantor and in any other document securing the indebtedness secured hereby shall be cumulative and concurrent and may be pursued separately, successively or together against Mortgagor, any guarantor or the premises, or any one or more of them, at the sole discretion of Mortgagee, and may be exercised as often as occasion therefor shall arise, all to the maximum extent permitted by the laws of the state in which the premises are situated. If Mortgagee elects to proceed under one right or remedy under this Mortgage or the Note, Mortgagee may at any time cease proceeding under such right or remedy and proceed under any other right or remedy under this Mortgage or the Note.

25. **Default Interest Rate.** The term "Default Interest Rate" is deemed to mean interest at the rate of three percent (3.0%) per annum in excess of the interest rate from time to time prevailing under the Note until paid.

26. **Notices.** Any notice that Mortgagor or Mortgagee may desire or be required to give to the other party hereunder shall be in writing, and shall be deemed given upon the earlier of the actual receipt thereof by the intended recipient or on the second (2nd) business day after mailing the same to the intended recipient at the address therefor first above written with postage prepaid via certified first class mail, return receipt requested, or on the first (1st) business day after delivery by sender to a nationally recognized overnight courier service. By notice complying with the foregoing provisions of this paragraph, either party may from time to time change its address for notice purposes, except that any such notice shall not be deemed delivered until actually received by the intended recipient thereof.

27. **Time is of the Essence.** It is specifically agreed that time is of the essence of this Mortgage. The waiver of the options or obligations secured hereby shall not at any time thereafter be held to be abandonment of such rights.

28. **Mortgagee's Lien for Service Charge and Expenses.** At all times, regardless of whether any loan proceeds have been disbursed, this Mortgage secures (in addition to any loan proceeds disbursed from time to time) the payment of any and all loan commissions, service charges, liquidated damages, expenses, and advances due to or incurred by the Mortgagee in connection with this transaction.

29. **Modifications.** This Mortgage may not be changed, waived, discharged or terminated orally, but only by an instrument or instruments in writing, signed by the party against which enforcement of the change, waiver, discharge or termination is asserted.

30. **Covenants to Run with the Land.** All the covenants hereof shall run with the land.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

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

32. Construction. The place of contract and payment being located in Illinois, this Mortgage and the rights and indebtedness hereby secured shall be construed and enforced according to the laws of the State of Illinois. Mortgagee shall act reasonably in the exercise of any right of approval or consents and of any remedies provided hereunder to Mortgagee. Mortgagor irrevocably (a) agrees that Mortgagee may bring suit, action or other legal proceedings arising out of this Mortgage, the Note or any other Loan Documents, or the transaction contemplated hereby or thereby, in the courts of the State of Illinois in Cook County, Illinois or the courts of the United States for the Northern District of Illinois, Eastern Division; (b) consents to the jurisdiction of each such court in any such suit, action or proceeding; (c) waives any objection which Mortgagor may have to the laying of the venue of any such suit, action or proceeding in any of such courts; and (d) waives any right it may have to a jury trial in connection with any suit, action or proceeding arising out of this Mortgage, the Note or any other Loan Document or the transaction contemplated hereby or thereby.

33. Binding on Successors and Assigns. Definitions. This Mortgage and all provisions hereof shall extend and be binding upon Mortgagor's successors and assigns and all persons claiming under or through Mortgagor. The word "Mortgagee" when used herein shall include the successors and assigns of the Mortgagee named herein, and the holder or holders, from time to time, of the Note secured hereby. Whenever used, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders. The word "person" as used herein means any natural person and any partnership, joint venture, corporation, association, or other legal entity. The phrase "Beneficial Owner", as used herein, means the person who owns, or if there be more than one, each of the persons who collectively own one hundred percent (100%) of the beneficial interest in and power of direction under the trust of which Mortgagor is trustee.

34. Further Assurances. Mortgagor shall execute, acknowledge and deliver to Mortgagee and to any subsequent holder from time to time upon demand (and pay the costs of preparation and recording thereof) any further instrument or instruments, including, but not limited to, mortgages, security agreements, financing statements, assignments and renewal and substitution notes, so as to re-affirm, to correct and to perfect the evidence of the obligation hereby secured and the lien of Mortgagee to all or any part of the premises intended to be hereby mortgaged, whether now mortgaged, later substituted for, or acquired subsequent to the date of this Mortgage and extensions or modifications thereof, and will do or cause to be done all such further acts and things as may reasonably be necessary fully to effectuate the intent of this Mortgage.

35. Recording and Filing. Mortgagor, at its expense, will cause this Mortgage and all supplements thereto for which constructive notice must be given to protect Mortgagee, at all times to be recorded and filed, and re-recorded and re-filed, in such manner and in such places as Mortgagee shall reasonably request, and will pay all such recording, filing, re-recording,

93366497

UNOFFICIAL COPY

re-filing taxes, fees and other charges to the maximum extent permitted by the laws of the state in which the premises are situated.

36. Right to Contest Taxes and Mechanics' Liens. The obligations of Mortgagor under Sections 3 and 7 hereof, and the rights of Mortgagee under Section 10 hereof, are subject to the right Mortgagor shall have to contest in good faith the validity or amount of any tax or assessment or lien arising from any work performed at or materials furnished to the premises which right, however, is conditional upon (i) such contest having the effect of preventing the collection of the tax, assessment or lien so contested and the sale or forfeiture of the premises or any part thereof or interest therein to satisfy the same, (ii) Mortgagor giving Mortgagee written notice of its intention to contest the same in a timely manner, which, with respect to any contested tax or assessment, shall mean before any such tax, assessment or lien has been increased by any penalties or costs, and with respect to any contested mechanic's lien claim, shall mean within twenty (20) days after Mortgagor receives actual notice of the filing thereof, (iii) Mortgagor making and thereafter maintaining with Mortgagee or such other depository as Mortgagee may designate, a deposit of cash (or United States government securities, in discount form, or other security as may, in Mortgagee's sole discretion, be acceptable to Mortgagee, and in either case having a present value equal to the amount herein specified), or other security as may be reasonably acceptable to Mortgagee, in an amount not less than One Hundred Fifty Percent (150%) of the amount which, in Mortgagee's reasonable opinion, determined from time to time, shall be sufficient to pay in full such contested tax, assessment or lien and penalties, costs and interest that may become due thereon in the event of a final determination thereof adverse to Mortgagor or in the event Mortgagor fails to prosecute such contest as herein required, or in lieu thereof, Mortgagor providing to Mortgagee title insurance over such matters in form and substance reasonably acceptable to Mortgagee, and (iv) Mortgagor diligently prosecuting such contest by appropriate legal proceedings. In the event Mortgagor shall fail to prosecute such contest with reasonable diligence or shall fail to maintain sufficient funds, or other security as aforesaid, on deposit as hereinabove provided, Mortgagee may, at its option, liquidate the securities deposited with Mortgagee, and apply the proceeds thereof and other monies deposited with Mortgagee in payment of, or on account of, such taxes, assessment, or liens or any portion thereof then unpaid, including the payment of all penalties and interest thereon, and return the balance, if any, to Mortgagor.

37. Interpretation. Unless the context otherwise requires, (a) the term "person" means an individual, corporation, partnership, trust, unincorporated association, joint venture, government (including political subdivisions), governmental authority or agency, or any other entity, (b) any reference in this Mortgage to "Mortgagor", "Mortgagee" or any other entity shall include its successors and assigns, (c) any reference to an Article or Section shall refer to the specified Article or Section of this Mortgage, (d) words importing the singular number include the plural number, and vice versa, (e) the terms "hereof", "hereby", "hereto", "hereunder", and similar terms refer to this entire Mortgage, (f) the term "including" shall mean "including without limitation", and (g) any reference to the real estate shall refer to the real estate or any part thereof or any estate or interest therein.

90000000

UNOFFICIAL COPY

38. Invalidity of Certain Provisions. If the security interest, lien or estate created by this Mortgage is invalid or unenforceable as to any part of the premises, or as to any part of the indebtedness secured hereby, the unsecured or partially secured portion thereof shall be completely paid prior to the payment of the remaining and secured or partially secured portion thereof, and all payments made thereon, whether voluntary or pursuant to foreclosure sale or other enforcement action or procedure, shall be considered to have been first paid on and applied to the full payment of that portion thereof which is not secured or fully secured by this Mortgage.

39. Severability. If any term or provision of this Mortgage or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Mortgage, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Mortgage shall be valid and enforceable to the fullest extent permitted by law.

40. Exculpation. This Mortgage is executed by American National Bank and Trust Company of Chicago, not personally, but 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 contained shall be construed as creating any liability on the said trustee personally to pay the Note or any interest that may accrue thereon, or any indebtedness accruing hereunder, or to perform any covenant either express or implied herein contained, all such personal liability, if any, being expressly waived by Mortgagee and by every person now or hereafter claiming any right or security hereunder, and that so far as trustee is personally concerned, the legal holder or holders of the Note and the owner or owners of any indebtedness accruing hereunder shall look to the premises hereby conveyed for the payment thereof by the enforcement of the lien hereby created in the manner herein and in the Note provided and to any other security given for the indebtedness evidenced by the Note.

41. Joint and Several Obligations. As used herein, "Mortgagor" shall mean each and every one of the undersigned, jointly and severally, and all covenants, agreements, promises and representations herein contained shall be deemed to be made jointly and severally by each person or entity comprising Mortgagor.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

IN WITNESS WHEREOF, Mortgagor has caused this Mortgage and Security Agreement to be signed the day and year first written above.

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

This Mortgage is executed by the American National Bank and Trust Company of Chicago, not personally but as Trustee as aforesaid in the exercise of the power and authority conferred upon and vested in it as such Trustee (and said American National Bank and Trust Company of Chicago, 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 said note contained shall be construed as creating any liability on the said First Party or on said American National Bank and Trust Company of Chicago personally to pay the said note or any interest that may accrue thereon, or any indebtedness accruing hereunder, or to perform any covenant, warranty or indemnity either express or implied herein contained, all such liability, if any, being expressly waived by Mortgagee and by every person now or hereafter claiming any right or security hereunder, and that so far as the First Party and its successors and said American National Bank and Trust Company of Chicago personally are concerned, the legal holder or holders of said note and the owner or owners of any indebtedness accruing hereunder shall look solely to the premises hereby conveyed for the payment thereof, by the enforcement of the lien hereby created, in the manner herein and in said note provided or by action to enforce the personal liability of the guarantor, if any.

IN WITNESS WHEREOF, American National Bank and Trust Company of Chicago, not personally but as Trustee as aforesaid, has caused these presents to be signed by one of its Vice-Presidents, or Assistant Vice-Presidents, and its corporate seal to be hereunto affixed and attested by its Assistant Secretary, the day and year first above written.

AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO
As Trustee as aforesaid and not personally

By _____
Vice President

ATTEST _____
Assistant Secretary

STATE OF ILLINOIS
COUNTY OF COOK ss.

I, LAURA KUMINGO a Notary Public, in and for said County, in the State aforesaid,

DO HEREBY CERTIFY, that E. JOHANSEN Vice-President of the AMERICAN NATIONAL BANK AND TRUST COMPANY of Chicago, and Gregory S. Kasprzyk Assistant Secretary of said Company, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Vice-President, and Assistant Secretary, 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 Assistant Secretary then and there acknowledged that he, as custodian of the corporate seal of said Company, did affix the corporate seal of said Company to said instrument as his 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.

"OFFICIAL SEAL"
LAURA KUMINGO
Notary Public, State of Illinois
My Commission Expires 11/24/96
Form 1308 R-4/89

GIVEN under my hand and notarial seal, this _____ day of _____ A.D. 19

MAY 13 1993

Laura Kumingo
Notary Public

00006497

UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, _____, a Notary Public in and for said County, in the State aforesaid, do hereby certify that _____, _____ of American National Bank and Trust Company of Chicago, and _____ of said corporation, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that they signed and delivered the said instrument as such officers of said corporation as their own free and voluntary act and as the free and voluntary act of said corporation, as Trustee as aforesaid, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this ___ day of _____, 1993.

Notary Public

My Commission Expires:

Property of Cook County Clerk's Office

93366497

PARCEL 1

A TRACT OF LAND COMPRISED OF LOTS 1 AND 5, TOGETHER WITH A PART OF EACH OF LOTS 2 AND 6, IN THE RESUBDIVISION OF LOTS 1 AND 2 OF OWNERS SUBDIVISION OF LOT 12 (EXCEPT THE EAST 73 FEET THEREOF) IN ASSESSOR'S SUBDIVISION OF THAT PART OF THE SOUTHWEST QUARTER OF SECTION 30, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE SOUTHWESTERLY LINE OF ELSTON AVENUE (66.00 FEET WIDE) WITH THE SOUTHEASTERLY LINE OF LEAVITT STREET (66.00 FEET WIDE) AND RUNNING THENCE SOUTHWESTWARDLY ALONG SAID SOUTHEASTERLY LINE OF LEAVITT STREET, SAID SOUTHEASTERLY LINE BEING ALSO THE NORTHWESTERLY LINE OF LOTS 1 AND 2, A DISTANCE OF 401.45 FEET TO A POINT WHICH IS 10.00 FEET SOUTHWESTERLY FROM THE NORTHEASTERLY CORNER OF SAID LOT 2; THENCE SOUTHEASTWARDLY ALONG A LINE WHICH IS 10.00 FEET SOUTHWESTERLY FROM AND PARALLEL WITH THE NORTHEASTERLY LINE OF SAID LOT 2, A DISTANCE OF 314.93 FEET TO A POINT OF CURVE IN SAID PARALLEL LINE; THENCE SOUTHEASTWARDLY ALONG SAID PARALLEL LINE, BEING HERE A CURVED LINE, TANGENT TO THE LAST DESCRIBED LINE, CONVEXED WESTERLY AND HAVING A RADIUS OF 302.94 FEET, A DISTANCE OF 108.32 FEET; THENCE NORTHEASTWARDLY ALONG A LINE DRAWN PARALLEL WITH THE SOUTHEASTERLY LINE OF LEAVITT STREET, A DISTANCE OF 381.79 FEET TO A POINT ON THE SOUTHWESTERLY LINE OF ELSTON AVENUE WHICH IS 432.01 FEET SOUTHEASTERLY OF THE AFOREMENTIONED INTERSECTION OF SAID SOUTHEASTERLY LINE OF LEAVITT STREET WITH SAID SOUTHWESTERLY LINE OF ELSTON AVENUE, AS MEASURED ALONG SAID SOUTHWESTERLY LINE; THENCE NORTHWESTERLY ALONG SAID SOUTHWESTERLY LINE OF ELSTON AVENUE, A DISTANCE OF 432.01 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

PARCEL 2

A TRACT OF LAND COMPRISED OF LOTS 7 AND 8, TOGETHER WITH A PART OF EACH OF LOTS 2 AND 6, ALL IN RESUBDIVISION OF LOTS 1 AND 2 OF OWNERS SUBDIVISION OF LOT 12 (EXCEPT THE EAST 73 FEET THEREOF) IN ASSESSOR'S SUBDIVISION OF THAT PART OF THE SOUTHWEST QUARTER OF SECTION 30, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE SOUTHWESTERLY LINE OF ELSTON AVENUE (66.00 FEET WIDE) WITH THE SOUTHEASTERLY LINE OF LEAVITT STREET (66.00 FEET WIDE) AND RUNNING THENCE SOUTHWESTWARDLY ALONG SAID SOUTHEASTERLY LINE OF LEAVITT STREET, SAID SOUTHEASTERLY

LINE BEING ALSO THE NORTHWESTERLY LINE OF LOTS 1 AND 2, A DISTANCE OF 401.45 FEET TO A POINT WHICH IS 10.00 FEET SOUTHWESTERLY FROM THE NORTHEASTERLY CORNER OF SAID LOT 2; THENCE SOUTHEASTWARDLY ALONG A LINE WHICH IS 10.00 FEET SOUTHWESTERLY FROM AND PARALLEL WITH THE NORTHEASTERLY LINE OF SAID LOT 2, A DISTANCE OF 314.93 FEET TO A POINT OF CURVE IN SAID PARALLEL LINE; THENCE SOUTHEASTWARDLY ALONG SAID PARALLEL LINE, BEING HERE A CURVED LINE, TANGENT TO THE LAST DESCRIBED LINE, CONVEXED WESTERLY AND HAVING A RADIUS OF 302.94 FEET, A DISTANCE OF 108.32 FEET TO THE POINT OF BEGINNING; THENCE NORTHEASTWARDLY ALONG A LINE DRAWN PARALLEL WITH THE SOUTHEASTERLY LINE OF LEAVITT STREET, A DISTANCE OF 381.79 FEET TO A POINT ON THE SOUTHWESTERLY LINE OF ELSTON AVENUE WHICH IS 432.01 FEET SOUTHEASTERLY OF THE AFOREMENTIONED INTERSECTION OF SAID SOUTHEASTERLY LINE OF LEAVITT STREET WITH SAID SOUTHWESTERLY LINE OF ELSTON AVENUE, AS MEASURED ALONG SAID SOUTHWESTERLY LINE; THENCE SOUTHEASTERLY ALONG SAID SOUTHWESTERLY LINE OF ELSTON AVENUE, A DISTANCE OF 219.43 FEET TO THE SOUTHEASTERLY CORNER OF LOT 8 AFORESAID; THENCE SOUTHWESTWARDLY ALONG A SOUTHERLY LINE OF SAID LOT 8, BEING HERE A CURVED LINE, CONVEXED SOUTHEASTERLY AND HAVING A RADIUS OF 533.22 FEET, (THE CHORD OF SAID CURVE FORMING AN ANGLE OF 83 DEGREES 09 MINUTES 30 SECONDS WITH SAID SOUTHWESTERLY LINE OF ELSTON AVENUE AS MEASURED COUNTER-CLOCKWISE FROM NORTHWESTERLY TO SOUTHWESTERLY) AN ARC DISTANCE OF 127.58 FEET; THENCE NORTHERLY ALONG A SOUTHERLY LINE OF LOT 8, BEING A RADIAL LINE OF THE LAST DESCRIBED CURVE, A DISTANCE OF 14.00 FEET; THENCE SOUTHWESTWARDLY ALONG A SOUTHERLY LINE OF SAID LOT 8 AND LOT 7 AFORESAID, BEING HERE A CURVED LINE HAVING A COMMON CENTER WITH THE LAST DESCRIBED CURVED LINE, CONVEXED SOUTHERLY AND HAVING A RADIUS OF 519.22 FEET, AN ARC DISTANCE OF 219.63 FEET; THENCE WESTWARDLY ALONG A STRAIGHT LINE WHICH FORMS AN ANGLE OF 82 DEGREES 27 MINUTES 36 SECONDS WITH THE RADIAL LINE OF THE LAST DESCRIBED CURVED LINE, AS MEASURED COUNTER-CLOCKWISE FROM NORTH TO WEST, A DISTANCE OF 1.60 FEET TO AN INTERSECTION WITH THE AFOREMENTIONED LINE WHICH IS 10.00 FEET SOUTHWESTERLY FROM AND PARALLEL WITH THE NORTHEASTERLY LINE OF LOT 2; THENCE NORTHWESTWARDLY ALONG SAID PARALLEL LINE, BEING A SOUTHEASTWARDLY EXTENSION OF THE ABOVE DESCRIBED CURVED LINE HAVING A RADIUS OF 302.94 FEET, A DISTANCE OF 116.39 FEET TO THE POINT OF BEGINNING; IN COOK COUNTY, ILLINOIS.

PERMANENT REAL ESTATE TAX INDEX NUMBERS:

- 14-30-319-001; 14-30-319-005; 14-30-319-006; 14-30-319-007; 14-30-319-008 and 14-30-319-018

COMMON ADDRESS:

Southwest corner of Elston and Leavitt Streets, Chicago, Illinois

90066497

UNOFFICIAL COPY

SCHEDULE I

HAZARDOUS SUBSTANCES DISCLOSURES TO MORTGAGEE

The following documents and materials were submitted to Mortgagee for its review and approval as hereinafter set forth. The following disclosures have been agreed by Lender to constitute full compliance with the requirements of Section 4.4(a)(vii) of the Line of Credit Mortgage Note.

1. Under cover of letter dated November 11, 1992, Steven Schwartz sent to Mortgagee (to the attention of Doug Sutton) a copy of the following:

- Versar, Inc. Summary of Site Environmental Conditions dated November 3, 1992.
- Illinois Environmental Protection Agency LUST Clean Closure letter dated April 16, 1992.
- Illinois Environmental Protection Agency letter dated October 14, 1992 approving groundwater conditions and PNA encapsulation.
- Wang Engineering, Inc. Magnetometer Survey dated August 14, 1992.

2. Under cover of letter dated January 15, 1993, Steven Schwartz sent to Mortgagee (to the attention of Val Rajic) a copy of the Versar, Inc. draft Phase I report dated September, 1989 and a copy of the Phase I Re-survey dated December, 1992 naming Doug Sutton as an addressee.

3. A copy of a letter from the Illinois Environmental Protection Agency dated April 6, 1993 to Mr. Jim Longson of the firm of Testing Services Corporation, a copy of which was sent to Steven Schwartz.