

94688428

94688428

94688428

LEASEHOLD MORTGAGE

THIS LEASEHOLD MORTGAGE (the "Mortgage") is dated August 1, 1994, by and between KELLY A. POPPEN, not personally, but as Trustee of the SUZANNE B. POPPEN REVOCABLE TRUST under Agreement dated September 25, 1987 and KELLY A. POPPEN, Individually (hereinafter jointly referred to as "Mortgagor"), and COLE TAYLOR BANK, an Illinois banking association (the "Mortgagee"), whose mailing address is 350 East Dundee Road, Wheeling, Illinois 60090.

. DEPT-01 RECORING \$59.50
. T#9999 TRAM 4938 08/04/94 15:27:00
. #5394 # *-94-688428
. COOK COUNTY RECORDER

WITNESSETH

THAT WHEREAS the Mortgagor is justly indebted to the Mortgagee pursuant to the terms of the PROMISSORY NOTE made by the Mortgagor of even date herewith, made payable to the order of and delivered to the Mortgagee in the principal sum of ONE HUNDRED EIGHTY THOUSAND AND NO/100 DOLLARS (\$180,000.00) (the "Note"). The principal amount of the Note from time to time outstanding shall bear interest at the rate of NINE PERCENT (9%) per annum ("Interest Rate"), and shall be payable in installments as provided in the Note. After default or maturity, the Note shall bear interest at the rate of FOURTEEN PERCENT (14%) per annum. The entire remaining balance of principal and interest, if not sooner paid, shall be due on August 1, 1999. All such payments on account of the indebtedness secured hereby shall be applied first to interest on the unpaid principal balance, secondly to any other sums due hereunder, thirdly to all other advances and sums secured hereby, and the remainder to principal, all of said principal and interest being made payable at such place as the holder of the Note may from time to time in writing appoint, and in the absence of such appointment, then at the office of COLE TAYLOR BANK, 350 East Dundee Road, Wheeling, Illinois 60090.

NOW THEREFORE, the Mortgagor, to secure the payment of the Indebtedness (hereafter defined) including interest and late charges in accordance with the terms, provisions and limitations of this Mortgage and of the Note, and the performance of the covenants and agreements herein contained by the Mortgagor to be performed, and also in consideration of the sum of ONE DOLLAR (\$1.00) in hand paid, the receipt whereof is hereby acknowledged, does by these presents MORTGAGE, GRANT, REMISE, RELEASE, ALIEN AND CONVEY unto the Mortgagee and its successors and assigns, all interest in the leasehold estate in the real estate located in the County of Cook and State of Illinois as more fully described in Exhibit "A" attached hereto and made a part hereof which is referred to herein as the "Premises".



59.50

N941537 E116961 2 of 2

94688428

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

TO HAVE AND TO HOLD the Premises unto the Mortgagee and its successors and assigns until all Indebtedness evidenced by the Note is fully discharged, for the purposes and uses herein set forth.

IT IS FURTHER UNDERSTOOD AND AGREED THAT:

Maintenance, Repair and Restoration of Improvements, Payment of Prior Liens, etc.

1. Mortgagor shall: (a) promptly repair, restore or rebuild any improvements now or hereafter on the Premises which may become damaged or destroyed to substantially the same character as prior to such damage or destruction; (b) keep the Premises constantly in good condition and repair, without waste; (c) keep the Premises free from mechanics' liens or other liens or claims for lien not expressly subordinated to the lien hereof (collectively called "Liens"), subject, however, to the rights of the Mortgagor set forth in Paragraph 1a below; (d) immediately pay when due any indebtedness which may be secured by a lien or charge on the Premises on a party with or superior to the lien hereof (no such lien to be permitted hereunder), and upon request exhibit satisfactory evidence of the discharge of such lien to Mortgagee, subject, however, to the rights of the Mortgagor set forth in Paragraph 1a below; (e) comply with all federal, state and local requirements of law, regulations, ordinances, orders and judgments and all covenants, easements and restrictions of record with respect to the Premises and the use thereof; (f) suffer or permit no material change in the general nature of the occupancy of the Premises without Mortgagee's prior written consent; and (g) pay each item of indebtedness secured by this Mortgage when due according to the terms hereof and of the Note.

Right to Contest.

1(a) Mortgagor may, in good faith and with reasonable diligence, contest the validity or amount of any lien on the Premises, and defer payment and discharge thereof during the pending of such contest, provided: (i) that such contest shall have the effect of preventing the sale or forfeiture of the Premises or any part thereof, or any interest therein, to satisfy such lien; (ii) that, within THIRTY (30) days after Mortgagor has been notified of the assertion of such lien Mortgagor shall have notified Mortgagee in writing of Mortgagor's intention to contest such lien; and (iii) that Mortgagor shall have deposited with Mortgagee at such place as Mortgagee may from time to time in writing appoint, and in the absence of such appointment, then at the office of Mortgagee, a sum of money which shall be sufficient in the reasonable judgment of Mortgagee to pay in full such lien and all interest which might become due thereon, and shall keep on deposit an amount so sufficient at all times, increasing such amount to cover additional interest whenever, in the reasonable judgment of Mortgagee, such increase is advisable or shall obtain a title endorsement or title indemnity to the Mortgagee's title insurance policies of Mortgagee or a surety bond of a surety company reasonably satisfactory to Mortgagee, insuring or

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

bonding Mortgagee against any harm as a result of such contest. Such deposits shall earn interest at no more than commercial money market rates. If Mortgagor shall fail to prosecute such contest with reasonable diligence or shall fail to pay the amount of the lien plus any interest finally determined to be due upon the conclusion of such contest, to the extent such amount exceeds the amount which Mortgagee will pay as provided below, or shall fail to maintain sufficient funds on deposit as hereinabove provided or to provide a title endorsement or indemnity or surety bond, Mortgagee may, at its option, apply any money so deposited in payment of or on account of such lien, or that part thereof then unpaid, together with all interest thereon. If the amount of money so deposited shall be insufficient for the payment in full of such lien, together with all interest thereon, Mortgagor shall forthwith, upon demand, deposit with Mortgagee a sum which, when added to the funds then on deposit, shall be sufficient to make such payment in full. Mortgagee shall, upon the final disposition of such contest, apply any money so deposited in full payment of such lien or that part thereof then unpaid, together with all interest thereon (provided Mortgagor is not then in default hereunder) when so requested in writing by Mortgagor and when furnished by Mortgagor with sufficient funds to make such payment in full and with evidence satisfactory to Mortgagee of the amount of payment to be made.

Indebtedness.

1(b) "Indebtedness" means all obligations of Mortgagor or, if Mortgagor is a land trustee, any beneficiaries of the land trust of which Mortgagor is trustee, to Mortgagee for payment of any and all amounts due under the Note or this Mortgage. "Indebtedness" also includes all amounts so described herein and all costs of collection, legal expenses and in-house or reasonable outside attorneys' fees incurred or paid by Mortgagee in attempting the collection or enforcement of the Note or this Mortgage, or any extension or modification of this Mortgage or the Note, and any guaranty of the Note, or in any legal proceeding occurring by reason of Mortgagee's being the Mortgagee under this Mortgage or any extension or modification thereof or the payee under the Note or any extension or modification thereof, including but not limited to any declaratory judgment action, or in the repossession, custody, sale, lease, assembly or other disposition of any collateral for the Note. Notwithstanding anything contained herein to the contrary, in no event shall the lien of this Mortgage secure outstanding liabilities in excess of TWO HUNDRED PERCENT (200%) of the original stated principal amount of the Note.

Security Agreement and Financing Statement.

2. Mortgagor and Mortgagee agree: (i) that this Mortgage shall constitute a Security Agreement within the meaning of the Uniform Commercial Code (the "Code") of the State in which the Premises are located with respect to all sums on deposit with the

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

9 4 0 0 0 0 0 0

Mortgagee pursuant to Paragraphs 3, 4a, 6 and 19 hereof ("Deposits") and with respect to any property included in the definition herein of the word "Premises", which property may not be deemed to form a part of the real estate described herein or may not constitute a "fixture" (within the meaning of Section 9-313 of the Code), and all replacements of such property, substitutions for such property, additions to such property, and the proceeds thereof (said property, replacements, substitutions, additions and the proceeds thereof, but specifically excluding all personal property or trade fixtures of any lessee located on the Premises, being sometimes herein collectively referred to as the "collateral"); and (ii) that the Deposits and all of Mortgagor's right, title and interest therein are hereby assigned to the Mortgagee; all to secure payment of the Indebtedness and to secure performance by the Mortgagor of the terms, covenants and provisions hereof.

If an Event of Default occurs or exists under this Mortgage, then, in accordance with the provisions of any applicable law, the Mortgagee, pursuant to the appropriate provisions of the Code, shall have an option to proceed with respect to both the real property and collateral in accordance with its rights, powers and remedies with respect to the real property, in which event the default provisions of the Code shall not apply. The parties agree that if the Mortgagee shall elect to proceed with respect to the collateral separately from the real property, TEN (10) days written notice of the sale of the collateral shall be reasonable notice. The reasonable expenses of retaking, holding, preparing for sale, selling and the like incurred by the Mortgagee shall include, but not be limited to, reasonable attorneys' fees and legal expenses incurred by Mortgagee. The Mortgagor agrees that, without the written consent of the Mortgagee, the Mortgagor will not remove or permit to be removed from the Premises any of the Collateral except that so long as no Event of Default exists or occurs hereunder, Mortgagor shall be permitted to sell or otherwise dispose of the Collateral when obsolete, worn out, inadequate, unserviceable or unnecessary for use in the operation of the Premises, but only upon replacing the same or substituting for the same other Collateral at least equal in value and utility to the initial value and utility of that disposed of and in such a manner that said replacement or substituted Collateral shall be subject to the security interest created hereby and that the security interest of the Mortgagee shall be perfected and first in priority, it being expressly understood and agreed that all replacements, substitutions and additions to the Collateral shall be and become immediately subject to the security interest of this Mortgage and covered hereby. The Mortgagor shall, from time to time, in request of the Mortgagee, deliver to the Mortgagee at the cost of the Mortgagor: (i) such further financing statements and security documents and assurances as Mortgagee may require to the end that the liens and security interest created hereby shall be and remain perfected and protected in accordance with the requirements of any present or future law; and (ii) an inventory of the Collateral in reasonable detail. The Mortgagor covenants and represents that all Collateral now is, and that all replacements thereof, substitutions therefor or additions thereto, unless the Mortgagee otherwise consents, will be free and clear of liens, encumbrances, title retention devices and security interests of others.

94008128

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

The Mortgagor and Mortgagee agree, to the extent permitted by law, that: (i) all of the property described within the definition of the word "Premises" herein are or are to become fixtures on the land described herein; (ii) this instrument, upon recording or registration in the real estate records of the proper office, shall constitute a "fixture filing" within the meaning of Sections 9-313 and 9-402 of the Code; and (iii) Mortgagor is a record owner of the Premises described herein.

Stamp Tax; Effect of Changes in Laws Regarding Taxation.

3. If, by the laws of the United States of America or of any state or subdivision thereof having jurisdiction over the Mortgagor, any tax is due or becomes due in respect of the issuance of the Note (other than income taxes assessed to Mortgagee), the Mortgagor covenants and agrees to pay such tax in the manner required by any such law. The Mortgagor further covenants to reimburse the Mortgagee for any reasonable sums which Mortgagee may expend by reason of the imposition of any tax on the issuance of the Note.

In the event of the enactment, after this date, of any law of the state in which the Premises are located deducting from the value of the land for the purpose of taxation any lien thereon, or imposing upon the 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 the Mortgagee's interest in the Premises, or the manner of collection of taxes, so as to affect this Mortgage or the indebtedness or the holder thereof, then, and in any such event, the Mortgagor, upon demand by the Mortgagee, shall pay such taxes or assessments or reimburse the Mortgagee therefor; provided, however, that if in the opinion of counsel for the Mortgagee: (a) it might be unlawful to require Mortgagor to make such payment; or (b) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then and in any such event, the Mortgagee may elect, by notice in writing given to the Mortgagor, to declare all of the indebtedness to be and become due and payable NINETY (90) days from the giving of such notice.

Mortgagor and Lien Not Released.

4. From time to time Mortgagee may, at Mortgagee's option, without giving notice to or obtaining the consent of Mortgagor or Mortgagor's successors or assigns or the consent of any junior lienholder, guarantor or tenant, without liability on Mortgagee's part and notwithstanding Mortgagor's breach of any covenant, agreement or condition: (a) release anyone primarily or secondarily liable on any of the indebtedness; (b) accept a renewal note or notes therefor; (c) release from the lien of this Mortgage any part of the

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Premises; (d) take or release other or additional security for the Indebtedness; (e) consent to any plat, map or plan of the Premises; (f) consent to the granting of any easement; (g) join in any extension or subordination agreement; and (h) waive or fail to exercise any right, power or remedy granted by law or herein or in any other instrument given at any time to evidence or secure the payment of the Indebtedness.

Any actions taken by Mortgagee pursuant to the terms of this Paragraph 10 shall not impair or affect: (a) the obligation of Mortgagor or Mortgagor's successors or assigns to pay any sums at any time secured by this Mortgage and to observe all of the covenants, agreements and conditions herein contained; (b) the guaranty of any individual or legal entity for payment of the Indebtedness; and (c) the lien or priority of the lien hereof against the Premises, Mortgagor shall pay to Mortgagee a reasonable service charge and such title insurance premiums and reasonable attorneys' fees as may be incurred by Mortgagee for any action described in this Paragraph 10 taken at the request of Mortgagor or its beneficiary or beneficiaries.

Mortgagee's Reliance on Tax Bills, etc.

5. Mortgagee in making any payment hereby authorized: (a) relating to taxes and assessments, may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof; or (b) for the purchase, discharge, compromise or settlement of any other prior lien, may do so without inquiry as to the validity or amount of any claim for lien which may be asserted.

Acceleration of Indebtedness in Case of an Event of Default.

6. An Event of Default shall mean the following: (a) if Mortgagor shall fail to make due and punctual payment of principal or interest on the Note, or any other payment due in accordance with the terms thereof beyond all applicable cure periods (which terms are hereby incorporated by reference); or (b) the Mortgage or any managing partner of the beneficiary thereof or any guarantor of the Note shall file (i) a petition for liquidation, reorganization or adjustment of debt under Title 11 of the United States Code (11 U.S.C. 55 101 et seq.) or any similar law, state or federal, whether now or hereafter existing, or (c) any order for relief of the Mortgagor (or any beneficiary thereof) of the note shall be entered in any case under Title 11 of the United States Code, or a trustee or a receiver shall be appointed for the Mortgagor or for any beneficiary thereof or of any guarantor of the Note in any voluntary or involuntary proceeding, or any court shall have taken jurisdiction of all or the major part of the property of the Mortgagor (or of any beneficiary thereof) of the Note in any voluntary or involuntary proceeding for the reorganization, dissolution, liquidation, adjustment of debt or winding up of the Mortgagor (or of any

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

beneficiary thereof) or of any guarantor of the Note and such trustee or receiver shall not be discharged or such jurisdiction not be relinquished or vacated or stayed on appeal or otherwise stayed within NINETY (90) days; or (d) the Mortgagor (or any beneficiary thereof) or any guarantor of the Note secured hereby shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due, or shall consent to the appointment of a receiver or trustee or liquidator of all or any major part of its property; or (e) Mortgagor shall fail to observe or perform any other covenant, agreement or condition set forth herein and required to be kept or performed or observed by the Mortgagor (or its beneficiary), which failure is not cured within THIRTY (30) days after written notice thereof, provided that, if Mortgagor acts diligently, continuously in good faith to cure such failure within such THIRTY (30) day period after written notice and such failure cannot reasonably be cured within such time period, then such time period shall be extended; (f) Mortgagor (and its beneficiary or beneficiaries) shall fail to observe or perform any covenant, agreement or condition required to be kept or observed by Mortgagor (or its beneficiary or beneficiaries) in any other instrument given at any time to evidence, guaranty or secure the payment of the indebtedness beyond all applicable cure periods set forth therein; or (g) if there occurs a material change in the financial condition of the Guarantors, collectively.

If an Event of Default shall exist or occur, then the whole of the indebtedness shall at once, at the option of the Mortgagee, become immediately due and payable without notice to Mortgagor. If while any insurance proceeds or condemnation awards are held by or for the Mortgagee to reimburse Mortgagor or any lessee for the cost of repair, rebuilding or restoration of building(s) or other improvement(s) on the Premises, as set forth in Paragraphs 6 and 19 hereof, the Mortgagee shall be or become entitled to accelerate the maturity of the indebtedness, then and in such event, the Mortgagee shall be entitled to apply all such insurance proceeds and condemnation awards then held by or for it in reduction of the indebtedness, and any excess held by it over the amount of the indebtedness shall be paid Mortgagor or any party entitled thereto, without interest, as the same appear on the records of the Mortgagee.

Foreclosure: Expense of Litigation.

7. When the indebtedness or any part thereof shall become due, whether by acceleration or otherwise, Mortgagee shall have the right to foreclose the lien hereof for such indebtedness or part thereof. In any civil action to foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the order or judgment for foreclosure and sale all reasonable expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for reasonable attorneys' fees, appraiser's fees, special process server fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of said order or judgment) of procuring all such abstracts of title,

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

title searches and examination, title insurance policies, Torrens' Certificates and similar data and assurances with respect to the title as Mortgagee may deem reasonably necessary either to prosecute such civil action or to evidence to bidders at any sale which may be had pursuant to such order or judgment the true condition of the title to, or the value of the Premises. All reasonable expenditures and expenses of the nature in this paragraph mentioned and such reasonable expenses and fees as may be incurred in the protection of the Premises and the maintenance of the lien of this Mortgage, including the reasonable fees of any attorneys employed by Mortgagee in any litigation or proceeding affecting this Mortgage, the Note or the Premises, including probate, appellate and bankruptcy proceedings, or in preparations for the commencement or defense of any action or proceeding or threatened action or proceeding, shall be immediately due and payable by Mortgagor, promptly on receipt of a statement, with interest thereon at the rate set forth in the Note applicable to a period when a default exists thereunder, and shall be secured by this Mortgage.

At all times, the Mortgagor shall appear in and defend any suit, action or proceeding that might in any way in the sole judgment of Mortgagee affect the value of the Premises, the priority of the Mortgage or the rights and powers of Mortgagee hereunder or under any document given at any time to secure the Indebtedness. Mortgagor shall, at all times, indemnify, hold harmless and reimburse Mortgagee on demand for any and all loss, damage, expense or cost, including cost of evidence of title and attorneys' fees, arising out of or incurred in connection with any proceeding in which Mortgagee is held to have been liable as a result of negligence or willful act of Mortgagor.

Application of Proceeds of Foreclosure Sale.

8. The proceeds of any foreclosure sale of the Premises shall be distributed and applied in the following order of priority: first, on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in the preceding Paragraph hereof; second, all other items which may under the terms hereof constitute secured Indebtedness additional to that evidenced by the Note, with interest thereon as herein provided; third, all principal and interest remaining unpaid on the Note; and fourth, any overplus to any party entitled thereto as their rights may appear.

Appointment of Receiver or Mortgagee In Possession.

9. Upon, or at any time after, the commencement of an action to foreclose this Mortgage, the court in which such action was commenced may, upon request of the Mortgagee, appoint a receiver of the Premises either before or after foreclosure sale, without notice and without regard to the solvency or insolvency of Mortgagor at the time of application for such receiver and without regard to the then value of the Premises or

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

whether the same shall be then occupied as a homestead or not; and the Mortgagee or any holder of the Note may be appointed as such receiver or as Mortgagee in possession. Such receiver or the Mortgagee in possession shall have power to collect the rents, issues and profits of the Premises during the pendency of such foreclosure action and, in case of a sale and deficiency, during the full statutory period of redemption (if any), whether there be redemption or not, as well as during any further times (if any) when Mortgagor, except for the intervention of such receiver or Mortgagee in possession, would be entitled to collect such rents, issues and profits, and all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the premises during the whole of said period. The court from time to time may authorize the receiver or Mortgagee in possession to apply the net income in its hands in payment in whole or in part of: (a) the indebtedness secured hereby or by any order or judgment foreclosing the lien of this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or the lien of such order or judgment, provided such application is made prior to foreclosure sale; (b) the deficiency in case of a sale and deficiency.

Mortgagee's Performance of Defaulted Acts.

10. If an Event of Default exists or occurs, Mortgagee may, but need not, make any payment or perform any act herein required of Mortgagor in any form and manner Mortgagee deems reasonably expedient, and 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 lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting said Premises or contest any tax or assessment or cure any default of any landlord in any lease of the Premises. All monies paid for any of the purposes herein authorized and all reasonable expenses paid or incurred in connection therewith, including reasonable attorneys' fees, and any other monies advanced by Mortgagee in regard to any tax referred to in Paragraphs 8 or 8.1 or to protect the Premises or the lien hereof, shall be so much additional indebtedness secured hereby, and shall become immediately due and payable without notice and with interest thereon at the rate of interest set forth in the Note applicable to a period when a default exists thereunder. 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.

Rights Cumulative.

11. Each right, power and remedy conferred upon the Mortgagee by this Mortgage and by all other documents evidencing or securing the indebtedness and conferred by law and in equity is cumulative and in addition to every other right, power and remedy, express or implied, given now or hereafter existing, at law and in equity; and

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

each and every right, power and remedy herein or therein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by the Mortgagee; and the exercise or the beginning of the exercise of any right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy; and no delay or omission of, or discontinuance by, the Mortgagee in the exercise of any right, power or remedy accruing hereunder or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any default or acquiescence therein.

Mortgagee's Right of Inspection.

12. Mortgagee shall have the right to inspect the Premises at all reasonable times upon reasonable advance notice to Mortgagor, and access thereto shall be permitted for that purposes.

Condemnation.

13. Mortgagor hereby assigns, transfers and sets over unto the Mortgagee the entire proceeds of any claim for damages for any of the premises taken or damaged under the power of eminent domain or by condemnation. So long as: (a) each lease listed on the SCHEDULE OF LEASES attached hereto, if any, and all future leases of the Premises are in full force and effect and each tenant thereunder is not in default and such taking shall not result in the termination or cancellation of any of those leases or give any tenant thereunder the right to cancel its lease; (b) the premises require repair, rebuilding or restoration; and (c) an Event of Default has not occurred; then any award, after deducting therefrom any expenses incurred in the collection thereof, shall be made available by the Mortgagee for the repair, rebuilding or restoration of the Premises in accordance with plans and specifications to be submitted to and approved by the Mortgagee in its reasonable judgment.

In all other cases, the Mortgagee may elect to apply the proceeds of the award upon or in reduction of the Indebtedness, whether due or not, or make those proceeds available for repair, restoration or rebuilding of the Premises in accordance with plans and specifications to be submitted to and approved by the Mortgagee. In any case where proceeds are made available for repair, rebuilding or restoration, the proceeds of the award shall be paid out in the same manner and under the same conditions provided in Paragraph 6 hereof for the payment of insurance proceeds toward the cost of repair, rebuilding or restoration. Any surplus which may remain out of said award after payment of such cost of repair, rebuilding, restoration and the reasonable charges of the disbursing Party shall, at the option of the Mortgagee, be applied on account of the Indebtedness or paid to any party entitled thereto as the same appear on the records of

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

the Mortgagee. Any proceeds of any award held by the Mortgagee hereunder for the purpose of rebuilding shall be invested in an interest-bearing account, for the benefit of Mortgagee, which is insured by an agency of the United States Government.

Release Upon Payment and Discharge of Mortgagor's Obligations.

14. Mortgagee shall release this Mortgage and the lien hereof by proper instrument in recordable form upon payment and discharge of all Indebtedness secured hereby (including any prepayment charges and late charges provided for herein or in the Note).

Giving Notice.

15. Any notice which either party hereto may desire or be required to give to the other party shall be deemed sufficient if given in accordance with the terms of the Note.

Waiver of Defense.

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

Waiver of Statutory Rights.

17. Mortgagor shall not and will not apply for or avail itself of any appraisalment, valuation, stay, extension or exemption laws or any so-called "Moratorium Laws", now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of the lien of this Mortgage, but hereby waives the benefit of such laws. Mortgagor, for itself and all who may claim through or under it, waives any and all right to have the property and estates comprising the 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 does hereby expressly waive any and all right of redemption from any order or judgment of foreclosure of the lien of this Mortgage on behalf of the Mortgagor, (the trust estate and all persons beneficially interested therein) and each and every person, except judgment creditors of the Mortgagor (in its representative capacity and of the trust estate), acquiring any interest in or title to the Premises subsequent to the date of this Mortgage.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Financial Statements and Records.

18. Each Mortgagor shall provide annual personal financial statements on Mortgagee's firm and annual tax returns by April 15 of each year following the calendar year end.

Filing and Recording Charges and Taxes.

19. Mortgagor will pay all filing, registration, recording and search and information fees, and all expenses incident to the execution and acknowledgment of this Mortgage and all other documents securing the Note and all federal, state, county and municipal taxes, other taxes, duties, imposts, assessments and charges arising out of or in connection with the execution, delivery, filing, recording or registration of the Note, this Mortgage and all other documents securing the Note and all assignments thereof.

Business Purpose: Usury Exemption.

20. The proceeds of the loan secured by this Mortgage will be used for the purposes specified in 815 ILCS 205.4, and that the principal obligation secured hereby constitutes a "business loan" which comes within the purview and operation of said paragraph.

Due on Sale or Further Encumbrance Clause.

21. Subject to Section 20 hereof, the occurrence at any time of any of the following events shall be deemed to be an unpermitted transfer of title to the Premises and therefore an event of default hereunder:

Any sale, conveyance, assignment or other transfer of, or the grant of a security interest in, all or any part of the title to the Premises (or the beneficial interest or power of direction under the trust agreement with the Mortgagor).

Any consent by the Mortgagee, or any waiver of an event of default, under this Paragraph shall not constitute a consent to, or waiver of any right, remedy or power of the Mortgagee upon a subsequent event of default under this Paragraph.

Leases entered into in the ordinary course of Beneficiary's business on lease forms previously approved in writing by Mortgagee and at rental rates not less than those

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

prevailing in the market place at the time of execution of the lease shall be deemed a permitted transfer of title and not an event of default.

Miscellaneous.

22. Binding Nature. This Mortgage and all provisions hereof shall extend to and be binding upon the original Mortgagor named on page 1 hereof and its successors, grantees, assigns, each subsequent owner or owners of the premises and all persons claiming under or through Mortgagor; and the word "Mortgagor" when used herein shall include all persons primarily and secondarily liable for the payment of the Indebtedness or any part thereof, whether or not such persons shall have executed the Note or this Mortgage.

22.1 Release of Previous Holder. The word "Mortgagee" when used herein shall include the successors and assigns of the original Mortgagee named on Page 1 hereof, and the holder or holders from time to time, of the Note. However, whenever the Note is sold, each prior holder shall be automatically freed and relieved, on and after the date of such sale, of all liability with respect to the performance of each covenant and obligation of Mortgagee hereunder thereafter to be performed, provided that any monies in which the Mortgagor has an interest, which monies are then held by the seller of the Note, are turned over to the purchaser of the Note.

22.2 Severability and Applicable Law. In the event one or more of the provisions contained in this Mortgage or in the Note or in any other document given at any time to secure the payment of the Note shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall, at the option of the Mortgagee, not affect any other provision of this Mortgage, the Note or other document and this Mortgage, the Note or other document shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein or therein. The validity and interpretation of this Mortgage and the Note it secures are to be construed in accordance with and governed by the laws of the State in which the Premises are situated.

22.3 Governmental Compliance. Mortgagor shall not by act or omission permit any lands or improvements not subject to the lien of this Mortgage to include the Premises or any part thereof in fulfillment of any governmental requirement, and Mortgagor hereby assigns to Mortgagee any and all rights to give consent for all or any portion of the Premises to be so used. Similarly, no lands or improvements comprising the Premises shall be included with any lands or improvements not subject to the lien of this Mortgage in fulfillment of any governmental requirement. Mortgagor shall not by act or omission impair the integrity of the premises as a single zoning lot separate and apart

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

from all other premises. Any act or omission by Mortgagor which would result in a violation of any of the provisions of this paragraph shall be void.

22.4 Estoppel Certificates. The managing general partner of the partnership which is the beneficiary of Mortgagor and Mortgagee, within FIFTEEN (15) days after receipt of a written request from the other, agrees to furnish from time to time a signed statement setting forth the amount of the indebtedness and whether or not any default, offset or defense then is alleged to exist against the indebtedness and, if so, specifying the nature thereof.

22.5 Non-Joiner of Tenant. After an Event of Default, Mortgagee shall have the right and option to commence a civil action to foreclose the lien of this Mortgage and to obtain an order or judgment of foreclosure and sale subject to the rights of any tenant or tenants of the Premises. The failure to join any tenant or tenants of the Premises as party defendant or defendants in any such civil action or the failure of any such order or judgment to foreclose their rights shall not be asserted by the Mortgagor as a defense in any civil action instituted to collect the indebtedness secured hereby, or any part thereof or any deficiency remaining unpaid after foreclosure and sale of the Premises, any statute or rule of law at any time existing to the contrary notwithstanding.

22.6 Regulation G. Clause. Mortgagor covenants and has been advised by its beneficiaries that the process evidenced by the Note secured hereby will not be used for the purchase or carrying of registered equity securities within the purview and operation of Regulation G issued by the Board of Governors of the Federal Reserve System, or for the purpose of releasing or retiring any indebtedness which was originally incurred for any such purpose.

Lien for Loan Commissions, Service Charges and the Like.

23. So long as the original Mortgagee named on Page 1 hereof is the owner the Note, and regardless of whether any proceeds of the loan evidenced by the Note have been disbursed, this Mortgage also secures the payment of all loan commissions, service charges, liquidated damages, expenses and advances due to or incurred by the Mortgagee in connection with the loan transaction intended to be secured hereby, all in accordance with the application of, and loan commitment issued to and accepted by, on or more of Mortgagor's beneficiaries in connection with said loan.

Cooperative Leasehold Estate.

24. Mortgagor hereby represents and covenants:

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

(a) On March 20, 1953, the 6-12 Scott Corporation Apartments, Inc., as Lessor, entered into a Shareholders Proprietary Lease with L. R. Gignilliat, Jr., as Lessee, covering Apartment No. 5 on the fifth floor of 12 Scott Street, Chicago, Illinois;

(b) The Lease was assigned to Mortgagor by the Assignment dated April 26, 1993;

(c) The Lease is in full force and effect and unmodified;

(d) All rents (including additional rents and other charges) reserved in the said Lease have been paid to the extent they were payable prior to the date hereof;

(e) The quiet and peaceful possession of the Mortgagee, and Mortgagor further agrees to defend the leasehold estate created under the Lease for the entire remainder of the term set forth therein, against all and every person or persons lawfully claiming, or who may claim the same or any part thereof, subject to the payment of the rents in the Lease reserved and subject to the performance and observance of all of the terms, covenants, conditions and warranties thereof;

(f) That there is no uncured default under the Lease or in the performance of any of the terms, covenants, conditions or warranties thereof on the part of the Lessee to be observed and performed. Further, no state of facts exist under the Lease which, with the lapse of time or giving of notice or both would constitute a default thereunder.

24.1 Payment of Lease Expenses. The Mortgagor shall pay or cause to be paid all rents, additional rents, taxes, assessments, water rates, sewer rents, and other charges and impositions payable by the Lessee under the Lease for which provision has not been made hereinbefore, when and as often as the same shall become due and payable.

24.2 Mortgagor's Covenants with Respect to Lease.

(a) The Mortgagor shall at all times promptly and faithfully keep and perform, or cause to be kept and performed, all the material covenants and conditions contained in the Lease by the Lessee under the Lease be kept and performed and in all respects conform to and comply with the material terms and conditions of the Lease, and the Mortgagor further covenants that it shall not do or permit anything which will impair or tend to impair the security of this Mortgage or will be grounds for declaring a

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

forfeiture of the Lease, and upon any such failure aforesaid, Mortgagor shall be subject to all of the rights and remedies granted Mortgagee in this Mortgage.

(b) The Mortgagor shall not modify, extend or in any way alter the terms of the Lease or cancel or surrender said Lease, or waive, execute, condone or in any way release or discharge the Lessor thereunder of or from the obligations, covenants, conditions and agreements of said Lessor to be done and performed; and the Mortgagor does expressly release, relinquish and surrender unto the Mortgagee all of its rights, power and authority to cancel, surrender, amend, modify or alter in any way the terms and provisions of the Lease and any attempt on the part of the Mortgagor to exercise any such right without the written approval and consent of the Mortgagee thereto being first had and obtained shall constitute a Default under the terms hereof and the entire Indebtedness shall, at the option of the Mortgagee, become due and payable.

(c) The entire Indebtedness shall immediately become due and payable at the option of the Mortgagee, if the Mortgagor fails to give the Mortgagee immediate notice of any material default under the Lease or of the receipt by it of any notice of default from the Lessor hereunder, or if the Mortgagor fails to furnish to the Mortgagee in a reasonable time after written notice any and all reasonable information which it may request concerning the performance by the Mortgagor of the covenants of the Lease, or if the Mortgagor fails to permit the Mortgagee or its representative at all reasonable times on reasonable notice to make investigation or examination concerning the performance by the Mortgagor of the covenants of the Lease. The Mortgagor shall deliver to the Mortgagee an original executed copy of the Lease, an estoppel certificate from the Lessor of the Lease within TEN (10) days of request by Mortgagee and in such form and content as shall be reasonably satisfactory to Mortgagee as well as any and all documentary evidence received by it showing compliance by the Mortgagor with the provisions of the Lease. Mortgagor shall also promptly deliver to the Mortgagee an exact copy of any notice, communication, plan, specification or other instrument or document received or given by it in any way relating to or affecting the Lease.

(d) In the event of any failure by Mortgagor to perform any covenant on the part of Lessee to be observed and performed under the Lease, the performance by Mortgagee on behalf Mortgagor of the Lease covenant shall not remove or waive, as between Mortgagor and Mortgagee, the corresponding Default under the terms hereof and any amount so advanced by Mortgagee or any costs incurred in connection therewith with

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Interest thereon at the Default Rate shall constitute additional indebtedness and be immediately due and payable.

24.3 **Merger.** So long as any of the indebtedness shall remain unpaid, unless the Mortgagee shall otherwise in writing consent, the fee title and the leasehold estate in the Leasehold Estate shall not merge but shall always be kept separate and distinct, notwithstanding the union of said estates either in the Lessor or in the Lessee, or in a third party, by purchase or otherwise; and the Mortgagor covenants and agrees that, if it shall acquire the fee title, or any other estate, title or interest in the Premises covered by said Lease, this Mortgage shall be considered as mortgaged, assigned or conveyed to the Mortgagee and the lien hereof spread to cover such estate with the same force and effect as though specifically herein mortgaged, assigned or conveyed and spread. The provisions of this paragraph shall not apply if the holder of the Note acquires the fee of the Premises unless Mortgagee shall so elect.

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

SUZANNE B. POPPEN REVOCABLE TRUST
under Agreement dated September 25, 1987

By: 

KELLY A. POPPEN, Trustee



KELLY A. POPPEN, Individually

INSTRUMENT PREPARED BY: ¹/₃ MAIL TO:

Richard C. Jones, Jr., Esq.
MALK & HARRIS
212 E. Ohio Street
Suite 500
Chicago, Illinois 60611
(312) 280-0111



UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT A

LEGAL DESCRIPTION

LEASEHOLD ESTATE CREATED BY THE SHAREHOLDERS PROPRIETARY LEASE DATED MARCH 20, 1953 BETWEEN THE 6-12 SCOTT COOPERATIVE APARTMENTS, INC., AS LESSOR, AND L.R. GIGNILLEAT, JR., AS LESSEE, AND ASSIGNED TO THE SUZANNE B. POPPEN REVOCABLE TRUST UNDER AGREEMENT DATED SEPTEMBER 25, 1987, DEMISING APARTMENT NO. 5 ON THE FIFTH FLOOR OF 12 SCOTT STREET, CHICAGO, ILLINOIS, LEGALLY DESCRIBED AS FOLLOWS:

LOT 5 IN BLOCK 5 IN STONE'S SUBDIVISION OF ASTOR ADDITION TO CHICAGO, IN SECTION 3, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

COMMON ADDRESS: 12 SCOTT STREET, APARTMENT 5
CHICAGO, ILLINOIS

PERMANENT INDEX NO. 17-03-109-012

94688108

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

7 1 1 1 1 1 1 1 1 1

SCHEDULE OF LEASES

Shareholders Proprietary Lease dated March 20, 1953 between 6-12 Scott Cooperative Apartments, Inc., an Illinois corporation, as lessor, and L.R. Gignilliet, Jr., as lessee, demising Apartment No. 5 on the fifth (5th) floor of 12 Scott Street, Chicago, Illinois, as assigned to Kelly A. Poppen, not personally, but as Trustee of the Suzanne B. Poppen Revocable Trust under Agreement dated September 25, 1987, by Assignment dated April 26, 1993, and assumed by Assignory by Assumption Agreement dated July 28, 1994.

L, individually and as Trustee,

Property of Cook County Clerk's Office

94688723

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

9 3 3 3 3 3 3 3

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

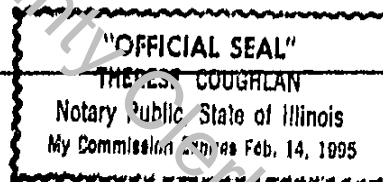
I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that KELLY A. POPPEN, Individually, and KELLY A. POPPEN, as Trustees of the SUZANNE B. POPPEN REVOCABLE TRUST under Agreement dated September 25, 1987, whose names are subscribed to the within the instrument, appeared before me this day in person and severally acknowledged that as such Trustees they signed and delivered the said Instrument of writing as their own free and voluntary act as Trustees aforesaid, for the and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 29th day of July, 1994.

Theresa Coughlan

Notary Public

My Commission Expires:



9-1688-123

UNOFFICIAL COPY

Property of Cook County Clerk's Office