

10a

MORTGAGE

Box 260

THIS MORTGAGE ("Mortgage"), dated and effective as of the 9th day of August, 1994, by PARKWAY BANK AND TRUST COMPANY, as Trustee, under Trust Agreement dated June 6, 1991, and known as Trust Number 10048, ("Mortgagor"), in favor of CAPITOL BANK OF WESTMONT, ("Mortgagee"), with its principal place of business as Westmont, Illinois, has reference to the following facts and circumstances:

DEPT-01 RECORDING 559.00
T:1111 TRAH 6654 09/02/94 12:13:00
47301 CG *--94--774593
COOK COUNTY RECORDER

RECITALS

- A. PARKWAY BANK AND TRUST COMPANY, as Trustee, under Trust Agreement dated June 6, 1991, and known as Trust Number 10048, Mortgagor desires, by the execution of this Mortgage, to induce the Mortgagee to lend the sum of ONE HUNDRED SIXTY-FIVE THOUSAND DOLLARS (\$165,000.00) and to secure the indebtedness pursuant to the terms contained herein. That said loan amount shall be repaid within a five (5) year period commencing September 1, 1994, in accordance with the Secured Note dated the same as this Mortgage.
- B. All of the terms and conditions of the Secured Note dated the same as this Mortgage are incorporated herein and made a part thereof.

NOW, THEREFORE, for and in consideration of the foregoing promises, which are incorporated hereby into and made a material part of this Mortgage, and for and after good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. DEFINITIONS AND TERMS

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

- (A) "And/or": one or the other or both, or any one or more or all, of the things or "Persons" (hereinafter defined) in connection with which the conjunction is used.
- (B) "Charges": all national, federal, state, county, city, municipal and/or other governmental (or any instrumentality, division, agency, body or department thereof) charges, impositions, levies, assessments and taxes (whether general, special or otherwise) water charges, sewer service charges, liens, claims or encumbrances upon and/or relating to the "Premises" (hereinafter defined), "Mortgagor's Liabilities" (hereinafter defined) and/or "Mortgagor's Obligations" (hereinafter defined).

ATTORNEY'S TITLE GUARANTEE FUND, INC. 94772593

59

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

- (C) "Documents": the definition ascribed to this term in Paragraph 2.3 below.
- (D) "Encumbrances": all liabilities, liens, claims, debts, exceptions, easements, restrictions, security interests, charges and all other types of encumbrances.
- (E) "Equipment": all present and future fixtures attached to, installed or located in or on the "Premises" (hereinafter defined), or required for use in or on or in connection with the Premises or the management, maintenance, operation or business thereof and all replacements thereof, substitutions therefor and accessions thereto, including, without limitation, any such item now or at any time or times hereafter situated on the premises and used to supply or otherwise deliver heat, gas, air conditioning, water, light, electricity, power, plumbing, refrigeration, sprinkling, ventilation, mobility, communication, incineration, recreation, laundry services and all other related or other such services.
- (F) "Event of Default": the definition ascribed to this term in Paragraphs 5.1.1 and 5.1.2 below.
- (G) "Leases": all present and future leases, agreements, tenancies, licenses and franchises of or from the Premises and/or the Equipment or in any way, manner or respect required, existing, used or usable in connection with the Premises and/or the Equipment or the management, maintenance, operation or business thereof, and all deposits of money as advance rent or for security under any or all of the Leases and all guaranties of lessee's performances thereunder.
- (H) "Mortgagor's Liabilities": (a) the payment, when due or declared due, of the principal sum of and interest accrued thereon and any and all other amounts due under (including, without limitation all prepayment premiums or other amounts due as a result of prepayment) now and/or hereafter owed or to become owing by Mortgagor to Mortgagee under and/or pursuant to the Secured Note of Mortgagor dated as of the date hereof in the principal amount of ONE HUNDRED SIXTY-FIVE THOUSAND DOLLARS (\$165,000.00) or the extension, renewal or rewrite thereof (b) the payment of any and all other debts, claims, obligations, demands, monies, liabilities and/or indebtedness (of any and every kind or nature) now and/or hereafter owing, arising, due or payable from Mortgagor to Mortgagee under and/or pursuant to the terms and provisions of this Mortgage (including, without limitation, all advances made to protect and preserve the value of the Mortgaged Property and the priority of Mortgagee's lien thereon); and (c) the payment of any and all other obligations and liabilities of Mortgagor to Mortgagee, including, without limitation, all debts, claims, obligations, demands, monies, liabilities and/or indebtedness (of any and every kind or nature) whether primary, secondary, direct, contingent, fixed or otherwise, now and/or from time to time hereafter owing, arising, due or payable, howsoever evidenced, created, incurred, acquired or owing, and however arising, whether under this Mortgage, the Other Agreements, or by oral agreement or operation of law or otherwise.

092724593

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

- (I) "Mortgagor's Obligations": the prompt, full and faithful performance, discharge, compliance and observation by Mortgagor of each and every term, condition, warranty, representation, agreement, undertaking, covenant and provision (other than Mortgagor's Liabilities) to be performed, discharged, observed or complied with by Mortgagor contained in this Mortgage and/or in the Other Agreements.
- (J) "Other Agreements": all agreements, instruments and documents, including, without limitation, loan agreements, guaranties, Mortgage, Secured Note, and all other written matter heretofore, now and/or from time to time hereafter executed by and/or on behalf of Mortgagor and delivered to Mortgagee or issued by Mortgagee upon the application and/or other request of, and on behalf of, Mortgagor (including, without limitation, the Secured Note, the assignments of Rents and Leases, the Guaranties, the Security Agreement and the Assignment of Beneficial Interests).
- (K) "Person": any individual, sole proprietorship, partnership, joint venture, trust, unincorporated organization, association, corporation, institution, entity, party or government (whether national, federal, state, county, city, municipal or otherwise, including, without limitation, any instrumentality, division, agency, body or department thereof).
- (L) "Premises": all of the following described real estate, and all of Mortgagor's estate right, title and interest therein, situated, lying and being in Chicago, Illinois, located in the County of Cook, State of Illinois, and as legally described on Exhibit A attached hereto and made a part hereof and commonly known as 4924 South Austin Avenue, Chicago, Illinois, together with all buildings, improvements, tenements, easements, hereditament and appurtenances now and/or at any time or times hereafter upon, belonging or otherwise appertaining to or situated on said real estate and all heretofore or hereafter acquired roads, alleys, streets and other public ways abutting said real estate, whether before or after vacation thereof.
- (M) "Rents": all present and future rents, issues, avails, profits and proceeds of or from the Premises, the Leases and/or the Equipment.

2. CONVEYANCE

- 2.1 To secure the payment by Mortgagor of Mortgagor's Liabilities and the performance by Mortgagor of Mortgagor's Obligations, Mortgagor hereby does represent, grant, give, bargain, confirm, assign, pledge, set over, transfer, sell, convey, revise, release and otherwise mortgage to Mortgagee, its successors and assigns, forever, the Premises, said property incorporated herein as Exhibit A, attached hereto and made a part hereof for the purposes and uses set forth in this Mortgage; provided, nevertheless that if Mortgagor, its successors or assigns shall satisfy, discharge and otherwise pay to Mortgagee, its successors or assigns, in full, the Mortgagor's Liabilities and keep and

94774503

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

perform all of Mortgagor's Obligations, then this Mortgage shall become null and void and shall be released at Mortgagor's expense.

- 2.2 Mortgagor, promptly upon request by Mortgagee, at Mortgagor's sole expense, will make, execute and deliver and/or will cause to be made, executed and delivered to and/or for the benefit of Mortgagee, in form and substance acceptable to Mortgagee, all documents that Mortgagee is advised are and/or deems necessary or appropriate to evidence, document or conclude the transactions described in and/or contemplated by this Mortgage or the other Agreements or required to perfect or continue perfected, as valid Encumbrances, the Encumbrances granted herein or in the other Agreements by Mortgagor to Mortgagee upon the Mortgaged Property. "Documents" means any mortgage, deed of trust or similar instrument, assignment of leases, assignment of rents, note, security agreement, guaranty, and all documents thereunder, financing statement, assignment of insurance, loss payable clause, mortgage title insurance policy, letter of opinion, waiver letter, estoppel letter, consent letter, non-offset letter, insurance certificate, appraisal, survey and any other similar such agreements, instruments or documents.

3. COVENANTS, WARRANTIES AND REPRESENTATIONS

3.1 Mortgagor covenants with and represents to Mortgagee as follows:

- (A) Mortgagor promptly will pay, or cause to be paid, when due or declared due, the Mortgagor's Liabilities and promptly, fully and faithfully will perform, discharge, observe and comply with, each and every of Mortgagor's obligations.
- (B) The execution, delivery and performance by Mortgagor of and under this Mortgage and the Other Agreements does not and will not constitute a violation of any applicable law and does not and will not conflict with or result in a default or breach of or under or an acceleration of any obligation arising, existing or created by or under any agreement, instrument, document, mortgage, deed, trust deed, note, judgment, order, award, decree or other restriction to which Mortgagor or any of the Premises is or hereafter shall become a party or by which Mortgagor or any of the Premises is or hereafter shall become bound or any law of regulatory provision now or hereafter affecting Mortgagor or any of the Premises.
- (C) Mortgagor beneficiaries have duly filed and shall continue timely to file all federal, state and other governmental tax and similar returns which Mortgagor is required by law to file and shall cause to be filed and shall cause to continue to be timely filed all federal, state and other governmental tax and similar returns which they are required by law to file. All taxes and other sums which are shown to be payable under such returns have been and shall be timely and fully paid.

94774593

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

- (D) There is no litigation, action, claim or proceeding pending or threatened which might, in any way, manner or respect, materially or adversely affect the Premises, or Mortgagee's Encumbrances thereon, the collectability of the obligations under the Notes and/or Other Agreements, the ability of Mortgagor to repay the Notes and/or the Other Agreements or the financial condition of the Premises.
- (E) The Premises now consists of and is in the same condition, ordinary wear and tear excepted, as it was when Mortgagee last inspected it and ordinary wear and tear excepted, it shall consist of and remain in such condition until the payment, in full, of Mortgagor's Liabilities.
- (F) There does not exist and hereafter there shall not arise any default or breach of or under any agreement, instrument or document for borrowed money by which Mortgagor or the Premises is bound or obligated.
- (G) The location, existence and use of the Premises is and shall remain in compliance with all applicable laws, rules, ordinances and regulations, including, without limitation, building and zoning laws, and all covenants and restrictions of record.
- (H) Mortgagor is and shall remain in peaceful possession of and will forever defend the Premises from and against any and all claims thereon or thereto of any and all parties.
- (I) Mortgagor will save and hold Mortgagee harmless of and from any and all damage, loss, cost and expense, including, without limitation, reasonable attorneys' fees, costs and expenses, incurred by reason of or arising from or on account of or in connection with any suit or proceeding, threatened, filed and/or pending, in or to which Mortgagee is or may become or may have to become a party by reason of or arising from or on account of or in connection with Mortgagor's Liabilities, Mortgagor's obligations, this Mortgage, the Secured Note or the Other Agreements.

3.2 Mortgagor covenants with and warrants and represents to Mortgagee that Mortgagor is lawfully seized, possessed and the owner of and has good and indefeasible, marketable fee-simple title to the Premises, free and clear of all Encumbrances except the Encumbrances of Mortgagee. *

- (A) Mortgagor will not change the use or character of or abandon the Premises and at all times hereafter shall keep the Premises in good condition and repair and will not commit or suffer waste and will make all necessary repairs, replacements and renewals to the Premises so that the value thereof shall at all times hereafter be maintained and preserved. Mortgagor shall not remove any fixture or demolish any building or improvement located in or on the Premises. Mortgagor shall pay for and complete, within a reasonable time, any building or improvement at any time in the process of erection upon the Premises, shall refrain from impairing or diminishing the value of the Premises, and promptly

* and those shown on title commitment no.1434952 issued by Attorneys Title Guaranty Fund, Inc. dated June 16, 1994 (the "Permitted Encumbrances")

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

shall repair, restore or rebuild any building or improvement now or hereafter on the Premises which may become damaged or destroyed. Mortgagor shall comply with all requirements of law and all municipal ordinances governing the Premises and the use thereof. Mortgagor shall permit Mortgagee, and its agents, upon demand, access to and to inspect the Premises at all reasonable times.

- (B) Mortgagor promptly shall pay and discharge, as and when due and payable, before any penalty attaches, all charges, that may be at any time levied, assessed or imposed upon or against the Premises, or any part thereof, and shall deliver to Mortgagee duplicate receipts evidencing payment thereof at least thirty (30) days before delinquency. To prevent default hereunder, Mortgagor may pay in full, under protest, and in the manner provided by statute, any Charge which Mortgagor may desire to contest. If Mortgagee is required by legislative enactment or judicial decision to pay any Charge in or to any state, municipality or government on the Premises (or on any interest therein), this Mortgage, the Other Agreements or Mortgagor's Liabilities, all of Mortgagor's Liabilities shall become and be 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 and right to elect will be unavailing and this Mortgage and the Other Agreements will be and remain in full force and effect as through said law had not been enacted or said decision had not been rendered if, notwithstanding such law or decision, Mortgagor lawfully may pay such Charge to or for Mortgagee and does, in fact, pay the same when payable. If at any time the United States of America shall require internal revenue stamps to be affixed to this Mortgage or the Other Agreements, Mortgagor will pay for the same, together with any interest or penalties imposed in connection therewith.
- (C) Mortgagor shall keep the Premises free and clear of all Encumbrances (including, without limitation mechanics liens and other similar liens or claims for liens) of any and every kind and nature except those described in Paragraph 3.2 above, and shall promptly pay or cause to be paid, at and when due and payable or when declared due and payable, any indebtedness which may become or be secured by such an Encumbrance and, immediately upon request by Mortgagee shall deliver to Mortgagee, evidence satisfactory to Mortgagee of the payment and discharge thereof. To prevent default hereunder, Mortgagor may indemnify Mortgagee, by a means determined solely by and acceptable to Mortgagee, against loss by reason of such an Encumbrance which Mortgagor may desire to contest. If, in accordance with the terms of this Mortgage, Mortgagee makes payment of any such Encumbrance, Mortgagee shall be subrogated to the rights of such claimant, notwithstanding that the Encumbrance may be released of record.
- (D) Mortgagor shall not, at any time or times hereafter, pledge, hypothecate or otherwise encumber all or any portion of the Mortgaged Property or Mortgagor's interest therein. *Without the prior written consent of Mortgagee, Mortgagor shall not sell or otherwise transfer all or any portion of the Premises or Mortgagor's interest therein. Mortgagee, in its sole discretion, may deliver or withhold such consent based upon Mortgagee's determination, to its sole satisfaction, of the
- * except for the Permitted Encumbrances.

947724503

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

credit worthiness and ability of the proposed assignee, transferee or purchaser to satisfy, perform and discharge Mortgagor's Liabilities in a proper and timely fashion and manner. Mortgagee, in its sole discretion, may condition the delivery of its consent upon Mortgagor agreeing to provide for such additional terms and conditions in this Mortgage or Other Agreements as may be acceptable to Mortgagee, in its sole discretion.

- (E) All present and future items of fixtures, (whether or not constituting a part of the Mortgaged Property) related or necessary to or used or usable in connection with any present or future building or improvement on the Premises, are and will be owned free and clear of all Encumbrances except those described in Paragraph 3.2 above.

- 3.3 If Mortgagor, immediately after written demand from Mortgagee, shall neglect, refuse and fail to commence work, repairs or the like to keep the Premises in good operating condition and repair or to replace or maintain the same as herein agreed, to pay the premiums for the insurance which is required to be maintained hereunder, to pay and discharge all encumbrances as herein agreed or otherwise defaults in the performance of Mortgagor's Obligations, Mortgagee, at its sole election, may cause such repairs or replacements to be made, obtain such insurance, pay such Encumbrances or perform such obligations. Any amounts paid by Mortgagor in taking such action together with interest thereon at the per annum rate (computed on the basis of a 360-day year and charged for actual days elapsed) equal to thirteen percent (13%) from the date of Mortgagee's payment thereof until repaid by Mortgagor to Mortgagee, shall be due and payable by Mortgagor to Mortgagee upon demand, and, until paid, shall constitute a part of the Mortgagor's Liabilities secured by this Mortgage.

Notwithstanding the foregoing, such advances by Mortgagee shall not be deemed to relieve Mortgagor from any Event of Default hereunder or impair any right or remedy consequent thereon. The exercise of the right to take such action shall be optional with Mortgagee and not obligatory upon Mortgagee and Mortgagee shall not in any case be liable to Mortgagor for failure or refusal to exercise any such right. In making any payments pursuant to the exercise of any such right, Mortgagee may rely upon any bills delivered to it by Mortgagor or any such payee and shall not be liable for any failure to make payments in any amounts other than as set forth in any such bills.

4. TAXES, INSURANCE AND CONDEMNATION

- 4.1 (A) Mortgagor, at all times, shall keep and maintain the Premises fully insured (without co-insurance) against loss or damage by, or abatement in the sum not less than Eight Hundred Thousand Dollars (\$800,000.00) resulting from, fire and such other hazards, casualties and contingencies as Mortgagee, from time to time, may require in companies, form, amounts and for such periods as are satisfactory to Mortgagee, but, in any event, for not less than the balance of the loan indebtedness secured by this Mortgage. All such policies and renewals thereof shall contain, in form and substance acceptable to Mortgagee, standard mortgagee

00224503

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

loss payable clauses naming Mortgagee as loss payee, as well as a standard waiver of subrogation endorsement and shall be delivered, as issued, to Mortgagee, with premiums therefor paid in full by Mortgagor. All policies shall provide that they are noncancellable by the insurer without first giving at least thirty (30) days prior written notice to Mortgagee of any intended cancellation. Mortgagor will give and will cause the Companies to give immediate written notice to Mortgagee of any loss or damage to the Premises caused by any casualty. In case of policies about to expire, Mortgagor will deliver to and deposit with Mortgagee renewal policies not less than forty-five (45) days prior to the respective dates of expiration. Mortgagor will deliver and deposit with Mortgagee receipts for the payment of the premiums on all policies and renewals thereof. In the event of foreclosure of this Mortgage or assignment hereof by Mortgagee or transfer of title to the Premises in extinguishment of Mortgagor's Liabilities, all right, title and interest of Mortgagor in and to any policies then in force shall pass to the purchaser, grantee or assignee.

(B) Full power is hereby conferred on Mortgagee:

- (1) To settle and compromise all claims under all policies.
- (2) To demand, receive and receipt for all monies becoming due and /or payable under all policies;
- (3) To execute, in the name of Mortgagor, or in the name of Mortgagee, any proofs of loss, notices or other instruments in connection with all claims under all policies; and
- (4) To assign all policies to any holder of Mortgagor's Liabilities or to the grantee of the Mortgaged Property in the event of the foreclosure of the Mortgagee or other transfer of title to the Mortgaged Property.

(C) In the event of payment under any of the policies, the proceeds of the policies shall be paid by the insurer to Mortgagee and Mortgagee, in its sole and absolute discretion, may:

- (1) Apply such proceeds, wholly or partially, after deducting all costs of collection, including reasonable attorneys' fees, either:
 - (a) Toward the alteration, reconstruction, repair or restoration of the Mortgaged Property or any portion thereof; or
 - (b) As a payment on account of Mortgagor's Liabilities without affecting the amount or time of subsequent payments required to be made by Mortgagor to Mortgagee under the Other Agreements), whether or not then due or payable;

or

- (2) Deliver the same to Mortgagor.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

- 4.2 (A) All awards now or hereafter made by any public or quasi-public authority to or for the benefit of Mortgagor in any way, manner or respect affecting, arising from or relating to the Premises, or any portion thereof, by virtue of an exercise of the right of eminent domain by such authority (including, without limitation, any award for taking of title, possession or right of access to a public way, or for any change of grade of streets affecting the Premises) hereby are assigned to Mortgagee as additional Security for the payment of Mortgagor's Liabilities (and for such purpose, Mortgagor hereby grants to Mortgagee a security interest therein).
- (B) Mortgagee shall and hereby is authorized, directed and empowered to collect and receive the proceeds of any such awards from the authorities making the same and to give proper receipts therefor (in Mortgagor's name, in Mortgagee's name or in both names), and may, in its sole and absolute discretion, use such proceeds for any one or more of the following purposes:
- (1) Apply the same, or any part thereof, to Mortgagor's Liabilities, whether or not then matured and without affecting the amount or time of subsequent payments required to be made under the Notes or the Other Agreements;
 - (2) Use the same, or any part thereof, to satisfy perform or discharge any of the Mortgagor's Obligations;
 - (3) Use the same, or any part thereof, to replace, repair or restore any or all of the Premises to a condition satisfactory to Mortgagee; or
 - (4) Release the same to Mortgagor.
- (C) Mortgagor, immediately upon request by Mortgagee, shall make, execute and deliver and/or cause to be made, executed and delivered to and/or for the benefit of Mortgagee any and all assignments and other instruments sufficient to assign, and cause the payment directly to Mortgagee of, all such awards, free and clear of all Encumbrances except those Encumbrances described in Paragraph 3.2 of this Mortgage. Notwithstanding any taking by eminent domain, alteration of the grade of any street or other injury to or decrease in value of the Premises by any public or quasi-public authority or corporation, Mortgagor's Liabilities shall continue to be due and payable, until any such award or payment shall have been actually received by Mortgagee, and any reduction in Mortgagor's Liabilities resulting from the application by Mortgagee of such award or payment as herein set forth shall be deemed to take effect only on the date of such receipt. If, prior to the receipt by Mortgagee of such award or payment, the Premises shall have been sold on foreclosure of this Mortgage, Mortgagee shall have the right to receive such award or payment to the extent of any deficiency found to be due upon such sale, with legal interest thereon, whether or not a deficiency judgment on this Mortgage shall have been sought or recovered or denied, and of the

00000000

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

reasonable attorneys' fees, costs, expenses and disbursements incurred by Mortgagee in connection with the collection of such award or payment.

5. DEFAULT

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

- (A) If Mortgagor shall fail or neglect to perform, keep or observe any of the Mortgagor's Obligations;
- (B) If any material statement, report or certificate made or delivered to Mortgagee by Mortgagor is not true and correct;
- (C) If Mortgagor shall fail to pay the Mortgagor's Liabilities, when due and payable or declared due and payable;
- (D) If the Premises are attached, seized, subjected to a writ of distress warrant, or are levied upon, or come within the possession of any receiver, trustee, custodian or assignee for the benefit of creditors and the same is not terminated or dismissed within twenty (20) days thereafter;
- (E) If a petition under any section or chapter of the Bankruptcy Code of 1984 with all amendments thereto or any similar law or regulation shall be filed by Mortgagor or if Mortgagor shall make an assignment for the benefit of its creditors or if any case or proceeding is filed by Mortgagor for its dissolution or liquidation;
- (F) If Mortgagor is enjoined, restrained or in any way prevented by court order from conducting all or any material part of its business affairs or if a petition under any section or chapter of the Bankruptcy Code of 1984 or any similar law or regulation is filed against Mortgagor or any one or more of them or if any case or proceeding is filed against Mortgagor for its dissolution or liquidation and such injunction, restraint or petition is not dismissed or stayed within sixty (60) days after the entry or filing thereof;
- (G) If an application is made by Mortgagor for the appointment of a receiver, trustee or custodian for the Premises;
- (H) If an application is made by any Person other than Mortgagor for the appointment of a receiver, trustee, or custodian for the Premises and the same is not dismissed within sixty (60) days after the application therefor;
- (I) If a notice of any Charge is filed of record, or if any Charge at any time or times hereafter becomes an Encumbrance upon the Premises and the same is not

1097446

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

released or contested in such manner as to stay the enforcement thereof within thirty (30) days after the same becomes an Encumbrance; or

- (J) The occurrence of a default or an Event of Default under any of the Other Agreements including but not limited to the Secured Note, which is not cured within the time, if any, specified therefor in such agreement, instrument or document.

5.1.2 The occurrence of any one of the following events, without the prior written consent of the Mortgagee, shall also be an immediate Event of Default and default hereunder:

- (A) If the Mortgagor shall create, effect or consent to or shall suffer or permit any conveyance, installment sale, sale, assignment, transfer lien, pledge, mortgage, security interest or other encumbrances or alienation of the Premises or any part thereof, or interest therein. *

5.2 Upon the occurrence of an Event of Default, and pursuant to the notice provisions set forth herein and in the Note, all of the Mortgagor's Liabilities shall become immediately due and payable, and Mortgagee, in its sole discretion and at its sole election, without notice of such election, and without demand, may exercise any other relief as provided under any of the Other Agreements including, but not limited to Secured Note and Assignments of Rents and Leases, and do any one or more of the following:

- (A) Collect Mortgagor's Liabilities at once by foreclosure or otherwise, without notice of broken covenant or condition (and in case of such Event of Default and the exercise of such option, Mortgagor's Liabilities shall bear interest, for the date of such Event of Default, at the rate provided in Paragraph 3.3 hereof).
- (B) Either with or without process of law, forcibly or otherwise enter upon and take immediate possession of the Mortgaged Property, expel and remove any Persons, goods or chattels occupying or upon the same, receive all Rents as provided under the Assignment of Rents and Leases, and issue receipts herefor, manage, control and operate the Premises as fully as Mortgagor might do if in possession thereof, including, without limitation, the making of all repairs and replacements deemed necessary by Mortgagee and the leasing of the same or any part thereof, from time to time and, after deducting all reasonable attorneys' fees and all costs and expenses incurred in the protection, care maintenance, management and operation of the Premises, apply the remaining net income, if any, to Mortgagor's Liabilities or upon any deficiency decree entered in any foreclosure proceeding. At the option of Mortgagee, such entry and taking of possession shall be accomplished either by actual entry and possession or by written notice served personally upon or sent by registered mail to Mortgagor at the address of Mortgagor last appearing on the records of Mortgagee. Mortgagor agrees to surrender possession of the Premises to Mortgagee immediately upon the occurrence of an Event of Default. If Mortgagor shall remain in physical possession of the Premises, or any part thereof, after any such Event of Default, such possession shall be as a tenant at sufferance of Mortgagee, and Mortgagor

* except for the Permitted Encumbrances.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

agrees to pay to Mortgagee, or to any receiver appointed as provided below, after such Event of Default, a reasonable monthly rental for the Premises, or the part thereof so occupied by Mortgagor, to be applied as provided above in the first sentence of this Subparagraph, and to be paid in advance on the first day of each calendar month, and, in default of so doing, Mortgagor may be dispossessed by the usual summary proceedings. In the event Mortgagor shall so remain in possession of all, or any part, of the Mortgaged Property, said reasonable monthly rental shall be in amounts established by Mortgagee in its sole discretion. This covenant shall be effective irrespective of any application for, or appointment of, a receiver. Notwithstanding paragraphs 735 ICS 5/15-1701 of the Code of Civil Procedure, the requirement that said Mortgagee in possession cannot be granted wherein the Mortgagor shows good cause, shall be waived by the Mortgagor.

- (C) File one or more suits at law or in equity for the foreclosure of this Mortgage or to collect Mortgagor's Liabilities. In the event of the commencement of any such suit by Mortgagee, Mortgagee shall have the right, without notice and without requiring bond (notice and bond being hereby waived), without regard to the solvency or insolvency of Mortgagor at the time of application and without regard to the then value of the Premises or whether the same is then occupied, to make application for and obtain the appointment of a receiver for the Premises. Such receiver shall have the power to collect the Rents during the pendency of such suit and, in case of a sale and a deficiency, during the fully statutory period of redemption or not, as well as during any further times when Mortgagor, except for the intervention of such receiver, would be entitled to collect the Rents, and shall have all other power which may be necessary or usual in such cases for the protection possession, control, management and operation of the Mortgaged Property. The court before which such suit is pending may from time to time authorize the receiver to apply the net income in his hands in payment, in whole or in part, of Mortgagor's Liabilities. In case of a sale pursuant to foreclosure, the premises may be sold as one parcel.
- (D) In the event of the commencement of any suit by Mortgagee to foreclose this Mortgage, Mortgagee shall have the right to apply to the court in which such proceedings are pending for entry of an order placing Mortgagee in possession of the 735 ICS 5/15-1701 or any similar law placing Mortgagee in possession of the Premises, Mortgagee may thereupon enter upon and take immediate possession of the Premises, expel and remove any Persons, goods or chattels occupying or upon the same, receive all rents as provided under the Assignment of Rents and Leases, and issue receipts therefor, manage, control and operate the Premises, including, without limitation, make all repairs and replacements deemed necessary by Mortgagee and lease the same, or any part thereof, from time to time, and, after deducting all reasonable attorneys' fees and all costs and expenses incurred in the protection, care, maintenance, management and operation of the Premises, apply the remaining net income, if any, to Mortgagor's Liabilities or upon any deficiency decree entered in such foreclosure proceedings. At the option of Mortgagee such entry and taking of possession shall be

9877A593

UNOFFICIAL COPY

accomplished either by actual entry and possession or by written notice of entry of the order placing Mortgagee in possession served personally upon or sent by registered mail to Mortgagor at the address of Mortgagor appearing on the records of Mortgagee. If Mortgagor shall remain in physical possession of the Premises, or any part thereof, after entry of an order placing Mortgagee in possession, Mortgagor's possession shall be as a tenant at suffrage of Mortgagee and Mortgagor agreed to pay to Mortgagee, to any other Person authorized by Mortgagee, after entry of such order, a reasonable monthly rental for the Premises, or the part thereof so occupied by Mortgagor, to be applied as provided above in the second sentence of this Subparagraph and to be paid in advance on the first day of each calendar month, and, in default of so doing, Mortgagor may be dispossessed by the usual summary proceedings. In the event Mortgagor shall so remain in possession of all or of any part of the Premises, said reasonable monthly rental shall be in amounts established by Mortgagee in its sole discretion.

- (E) Mortgagee has the right to enter upon the mortgaged property to conduct environmental inspections and audits if loan is in default or when otherwise deemed reasonably necessary by the mortgagee. All costs and expenses incurred in connection with such environmental inspections and audits shall be borne by the mortgagor.

5.3 Upon the occurrence of an Event of Default under this Mortgage, there will be added to and included as part of Mortgagor's Liabilities (and allowed in any Judgment of Foreclosure and Order of Sale of the Mortgagee's Property or in any judgment rendered upon this Mortgage and/or the Other Agreements) the following: all of the costs and expenses of taking possession of the Premises and of the holding, using, leasing, maintaining, repairing, improving and selling the same, including, without limitation, the costs, charges, expenses and attorneys' fees specified in Paragraph 5.4 below; receivers' fees; any and all expenditures which may be paid or incurred by or on behalf of Mortgagee for appraisers' fees, documentary and expert evidence, stenographers' charges, publication costs, fees and expenses for examination of title, title searches, guaranty policies, Torrens certificates, if necessary, and similar data and assurances with respect to the title to the Mortgaged Property; all prepayment of life premiums, if any, provided for in the Other Agreements; and all other fees, costs and expenses which Mortgagee deems necessary to prosecute any remedy it has under this Mortgage or to inform bidders at any sale which may be had pursuant to its rights hereunder, of the true condition of title or of the value of the Premises. All such costs, charges, expenses, prepayment or life premiums, fees and other expenditures shall be a part of Mortgagor's Liabilities, secured by this Mortgage, payable on demand and shall bear interest at the rate specified in Paragraph 3.3 hereof from the date of Mortgagee's payment thereof until repaid to Mortgagee.

5.4 If foreclosure proceedings are instituted upon this Mortgage, or if Mortgagee shall be a party to, shall intervene, or file any petition, answer, motion or other pleading in any suit or proceeding relating to this Mortgage, the Other Agreements or Mortgagor's Liabilities, or if Mortgagee shall incur or pay any expenses, costs, charges or reasonable

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

attorneys' fees by reason of the employment of counsel for advice with respect to this Mortgage the Other Agreements or Mortgagor's Liabilities, and whether in court proceedings or otherwise, such expenses and all of Mortgagee's reasonable attorneys' fees shall be part of Mortgagor's Liabilities, secured by this Mortgage, payable on demand and shall bear interest at the rate specified in Paragraph 3.3 hereof from the date of Mortgagee's payment thereof until repaid to Mortgagee.

- 5.5 The proceeds of any foreclosure sale of the Mortgaged Property shall be applied and distributed, first, on account of the fees, charges, costs and expenses described in Paragraph 5.3 above; second, to the balance of the Mortgagor Liabilities; and third, the surplus, if any, to Mortgagee.
- 5.6 In the event of the commencement of judicial proceedings to foreclose this mortgage, Mortgagor, on behalf of itself, its successors and assigns, and each and every Person it may legally bind acquiring any interest in or title to the Premises subsequent to the date of this Mortgage, (a) does hereby expressly waive any and all rights of appraisal, valuation, stay extension and (to the extent permitted by law) redemption from sale under any order or decree of foreclosure of this Mortgage; and (b) does hereby agree that when sale is had under any judgment of foreclosure of this Mortgage, upon confirmation of such sale, the officer making such sales shall be and is authorized immediately to execute and deliver to any purchaser at such sale a deed conveying the Premises, showing the amount paid therefor, or if purchased by the Person in whose favor the order or decree is entered, the amount of his bid therefor.
- 5.7 Mortgagee shall have the right from time to time to sue for any sums, whether interest, principal or any other sums required to be paid by or for the account of Mortgagor under the terms of this Mortgage or the Other Agreements, as the same become due under this Mortgage or the Other Agreements, or for any other of Mortgagor's Liabilities which shall become due, and without prejudice to the right of Mortgagee thereafter to bring an action of foreclosure, or any other action, for a default or defaults by Mortgagor existing at the time such earlier action was commenced.
- 5.8 No right or remedy of Mortgagee hereunder is exclusive of any other right or remedy hereunder or now or hereafter existing at law or in equity, but is cumulative and in addition thereto and Mortgagee may recover judgment thereon, issue execution therefor, and resort to every other right or remedy available at law or in equity, without first exhausting or affecting or impairing the security or any right or remedy afforded by this Mortgage. No delay in exercising, or omission to exercise, any such right or remedy will impair any such right or remedy or will be construed to be a waiver of any Event of Default by Mortgagor hereunder, or acquiescence therein, nor will it affect any subsequent Event of Default hereunder by Mortgagor of the same or different nature. Every such right or remedy may be exercised independently or concurrently, and when and so often as may be deemed expedient by Mortgagee. No terms or conditions contained in this Mortgage or the Other Agreements may be waived, altered or changed except as evidenced in writing signed by Mortgagor and Mortgagee.

00002226

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

- 5.9 Mortgagee shall release this Mortgage by proper instrument upon payment and discharge of all of Mortgagor's Liabilities, including all prepayment or like premiums, if any, provided for therein or with respect thereto and payment of all costs, expenses and fees, including reasonable attorneys' fees, incurred by Mortgagee for the preparation, execution and/or recording of such release.
- 5.10 Upon occurrence of an Event of Default and acceleration of the maturity of Mortgagor's Liabilities as provided herein, a tender of payment thereof by Mortgagor, or any other Person, or a payment thereof received upon or on account of a foreclosure of this Mortgage or Mortgagee's exercise of any of its other rights or remedies under this Mortgage, the Other Agreements or under any applicable law or in equity shall be deemed to be a voluntary prepayment made by Mortgagor of Mortgagor's liabilities and, therefore, such payment must, to the extent permitted by law, include the premiums and other payments required under the prepayment privilege, if any, contained in the instruments, documents and/or agreements pursuant to which such arise and/or exist.
- 5.11 If fulfillment of any provision herein or in the Other Agreements, at the time performance of such provision becomes due, involves exceeding such highest lawful contract rate, then ipso facto, the obligation to fulfill the same shall be reduced to such highest lawful contract rate. If by any circumstance Mortgagee shall ever receive as interest an amount which would exceed such highest lawful contract rate, the amount which may be deemed excessive interest shall be applied to the principal of Mortgagor's Liabilities and not to interest.
- 5.12 Any failure of Mortgagee to insist upon the strict performance by Mortgagor of any of the terms and provisions of this Mortgage or the Other Agreements executed and delivered by Mortgagor in connection herewith shall not be deemed to be a waiver of any of the terms and provisions thereof, and Mortgagee, notwithstanding any such failure, shall have the right at any time or times thereafter to insist upon the strict performance by Mortgagor of any and all of the terms and provisions thereof to be performed by Mortgagor. Neither Mortgagor, nor any other Person now or hereafter obligated for the payment of the whole or any part of Mortgagor's Liabilities, shall be relieved of such obligation by reason of the sale, conveyance or other transfer of the Mortgaged Property or the failure of Mortgagee to comply with any request of Mortgagor, or of any other Person, to take action to foreclose this Mortgage or otherwise enforce any of the provisions of this Mortgage or the Other Agreements, or by reason of the release, regardless of consideration, of the security held for Mortgagor's Liabilities or by reason of any agreement or stipulation between any subsequent owner or owners of the Mortgaged Property and Mortgagee extending the time of payment of Mortgagor's Liabilities or modifying the terms of the Other Agreements or this Mortgage without first having obtained the consent of Mortgagor or such other Person, and, in the latter event, Mortgagor, and all such other Persons, shall continue liable on account of Mortgagor's Liabilities and to make such payments according to the terms of any such agreement, extension or modification unless expressly released and discharged in writing by Mortgagee. Mortgagee, without notice, may release, regardless of consideration, any part of the security held for Mortgagor's Liabilities, without, as to the remainder of the security therefor, in any way impairing or affecting the lien of this Mortgage or the

95776503

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

priority of such lien over any subordinate lien. Mortgagee may resort for the payment of Mortgagor's Liabilities to any other security therefor held by Mortgagee in such order and manner as Mortgagee may elect.

- 5.13 The Mortgagor hereby waives all rights of redemption under the provision of the Illinois Mortgage Foreclosure Law of Illinois as it now exists or hereafter amended from time to time.
- 5.14 Upon an Event of a Monetary Default hereunder, the Lender shall give Borrower written notice of any event of default under this Mortgage, Secured Note or other agreements and the Borrower shall have thirty (30) days from the date as provided in paragraph 6.1 of the Mortgage according to the terms therein, to cure said default. In the event said default is not cured within said time, the entire principal balance, accrued interest, costs, fees, expenses, etc... shall be accelerated and immediately due and payable without notice by Lender to or demand by Lender of Borrower, all the Borrower's Liabilities shall be due and payable, forthwith. In the event of a non-monetary default, the Lender shall give the Borrower written notice of said default under the Secured Note, this Mortgage or other agreements and the Borrower shall have the amount of time provided for in the documents to cure and in the event none is set forth, the period shall be sixty (60) days.

6. MISCELLANEOUS

- 6.1 Every provision for notice, demand or request required in this Mortgage, or the Other Agreements or by applicable law shall be deemed fulfilled by written notice, demand or request personally served on (with proof of service endorsed thereon), or mailed to, as hereinafter provided, the party entitled thereto or on its successors or assigns. If mailed, such notice, demand or request shall be made certified or registered mail, return receipt requested, and deposited in any post office station or letter-box, enclosed in a postage paid envelope addressed to such party at its address set forth below or to such other address as either party hereto shall direct by like written notice and shall be deemed to have been received on the fifth (5th) day following posting as aforesaid except as otherwise provided for in paragraph 5.14 above. For the purposes herein, notices shall be sent to Mortgagor and Mortgagee as follows:

To Mortgagor: Parkway Bank and Trust Company
under Trust No. 10048
4800 N. Harlem Ave.
Harwood Heights, Illinois

with a copy to: Mathew J. Alagna, Jr.
4924 S. Austin Ave.
Chicago, Illinois 60638

94721593

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

To Mortgagee: Capitol Bank of Westmont
100 E. Ogden Ave.
Westmont, IL 60559

with a copy to: Freedman Anselmo and Lindberg
Attorneys at Law
1807 West Diehl Road - Suite 200
P.O. Box 3107
Naperville, Illinois 60566-7107

THE SIGNATURE OF PARKWAY BANK & TRUST CO. IS BASED SOLELY UPON INFORMATION FURNISHED BY THE BENEFICIARY OR BENEFICIARIES OF THE AFORESAID TRUST. THE UNDERSIGNED HAS NO PERSONAL KNOWLEDGE OF ANY OF THE FACTS OR STATEMENTS HEREIN CONTAINED.

- 6.2 All the covenants contained in this Mortgage will run with the land. Time is of the essence of this Mortgage and all provisions herein relating thereto shall be strictly construed.
- 6.3 This Mortgage, and all the provisions hereof, will be binding upon and inure to the benefit of the successors and assigns of Mortgagor and Mortgagee.
- 6.4 This Mortgage was executed and delivered in, and, except as otherwise specifically stated in any given paragraph hereof, shall be governed as to validity, interpretation, construction, effect and in all other respects by the laws and decisions of the State of Illinois or, if to the benefit of Mortgagee, the laws and decisions of the State of Illinois.
- 6.5 Any provision of this Mortgage which is unenforceable in any state in which this Mortgage may be filed or recorded or is invalid or contrary to the law of such state, or the inclusion of which would affect the validity, legality or enforcement of this Mortgage, shall be of no effect, and in such case all the remaining terms and provisions of this Mortgage shall subsist and be fully effective according to the tenor of this Mortgage, the same as though no such invalid portion had ever been included herein.
- 6.6 To the extent that any of Mortgagor's Liabilities represent funds utilized to satisfy any outstanding indebtedness or obligations secured by liens, rights or claims against the Premises or any part thereof, Mortgagee shall be subrogated to any and all liens, rights, superior titles and equities owned or claimed by the holder of any such outstanding indebtedness or obligation so satisfied, however remote, regardless of whether said liens, rights, superior title and equities are by the holder(s) thereof assigned to Mortgagee or released.

IN WITNESS WHEREOF, this Mortgage has been duly executed and delivered as of the day and year first above written.

PARKWAY BANK AND TRUST COMPANY, as Trustee under Trust Agreement dated June 6, 1991, as Trust Number 19048. *and not individually*

By: *[Signature]*
Title: Vice President Trust Officer

Attest: *[Signature]*
Title: ASSISTANT TRUST OFFICER

Exoneration provision restricting any liability of Parkway Bank & Trust Co. is attached to the original executed document.

94774593

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

RIDER ATTACHED TO AND MADE A PART OF THE TRUST DEED OR MORTGAGE

DATED 8/15/94 UNDER TRUST NO. 10048

This Mortgage is executed by PARKWAY BANK AND TRUST COMPANY, not personally but as Trustee under Trust No. 10048 in the exercise of the power and authority conferred upon and vested in it as such Trustee (and said PARKWAY BANK AND TRUST COMPANY hereby warrants that it possesses full power and authority to execute the Instrument) and it is expressly understood and agreed that nothing contained herein or in the note, or in any other instrument given to evidence the indebtedness secured hereby shall be construed creating any liability on the part of said mortgagor or grantor, or on said PARKWAY BANK AND TRUST COMPANY personally to pay said 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 liability, if any, being hereby expressly waived by the Mortgagee or Trustee under said Trust Deed, the legal owners or holders of the note, and by every Person now or hereafter claiming any right or security hereunder; and that so far as the mortgagor or grantor and said PARKWAY BANK AND TRUST COMPANY personally are concerned, the legal holder of the note and the owner or owners of any indebtedness accruing hereunder shall look solely to the premises hereby mortgaged or conveyed for the payment thereof, by the enforcement of the lien created in the manner herein and in said note provided or by action to enforce the personal liability of the guarantor or guarantors, if any.

94774503

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT "A"

LEGAL DESCRIPTION

Parcel 1:

The North 317 feet of the South 1058 feet of that part of the Northwest 1/4 of Section 8, Township 38 North, Range 13 East of the Third Principal Meridian, lying West of a line drawn at right angles to the South line of said Northwest 1/4 through a point 25 feet West of the Southeast corner of said 1/4 Section, and East of a line drawn through a point 450 feet East of the center line of South Meade Avenue and forming an angle of 89 degrees, 48 minutes, 45 seconds with the South line of the Northwest 1/4 of said Section 8, said angle being measured from East to North; also, a triangular parcel of land North of and adjoining the above-described tract, described by beginning at a point on the North line of said tract which is 17 feet East of the Northwest corner thereof; thence West 17 feet; thence North along the West line extended to first described tract 170 feet; thence Southeasterly in a straight line to the place of beginning;

Excepting however from the 1st above described tract of land a triangular parcel lying Westerly of a line drawn from a point in the West line of said tract, which is 170 feet North of the Southwest corner thereof to a point in the South line of said tract, which is 17 feet East of the Southwest corner thereof;

Parcel 2:

The North 10 feet of the South 741 feet of that part of the Northwest 1/4 of Section 8, Township 38 North, Range 13 East of the Third Principal Meridian, lying West of line drawn at right angles to the South line of said Northwest 1/4 through a point 25 feet West of the Southeast corner of said 1/4 Section and East of a line drawn through a point 450 feet East of the center line of South Meade Avenue and forming an angle of 89 degrees, 48 minutes, 45 seconds with the South line of the Northwest 1/4 of said Section 8, said angle being measured from East to North (except that part thereof lying Westerly of a line drawn from a point in the North line 17 feet East of the Northwest corner to a point in the South line 18 feet East of the Southwest corner), in Cook County, Illinois.

Commonly known as: 4924 South Austin Avenue, Chicago, Illinois

P.I.N.: 19-08-100-041

92724693

