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This mortgage is junior and subordinate to that certain mortgage dated June 6, 1989 and recorded June 15, 1989 in the Office of the Cook County, Illinois Recorder of Deeds as Document no. 89271447.

## MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, AND SECURITY AGREEMENT

THIS MORTGAGE is made as of this 18th day of March, 1994, between FRED HUDSON, an Illinois resident, ("Mortgagor"), with an office at the address shown opposite his signature below and Seaway National Bank of Chicago, a national banking association, whose address is 645 East 87th Street, Chicago, Illinois 60619 ("Lender").

### RECITALS

WHEREAS, Mortgagor has guaranteed a debt to Lender in the principal sum of One Hundred Thirty Six Thousand Dollars and NO XX/100 (\$136,000.00), which indebtedness is evidenced by Maker's note dated March 18, 1994 and all modifications, substitutions, extensions and renewals thereof ("Note") providing for repayment of principal and interest and providing for a final payment of all sums due thereunder on April 30, 2004. All obligors on the Note is collectively referred to herein as "Maker".

### THE GRANT

TO SECURE to Lender the repayment of the indebtedness evidenced by the Note, with interest thereon; the payment of all charges provided herein and all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Mortgage; and the performance of the covenants and agreements contained herein and in the Note, all future advances and all other indebtedness of Mortgagor or Maker to Lender whether now or hereafter existing (collectively, the "Secured Indebtedness" or "Indebtedness") and also for other good and valuable consideration, the receipt and sufficiency whereof is acknowledged, Mortgagor does hereby convey, grant, and mortgage to Lender the real estate ("Real Estate") located in the County of Cook, State of Illinois and described on Exhibit A, subject only to the covenants, conditions, easements and restrictions set forth on Exhibit B, if any ("Permitted Encumbrances"). The Real Estate has the common street address of 2935 West 86th Street, Chicago, Illinois 60652 ("Premises Address");

DEPT-01 RECORDING \$73.50  
T51111 TRAN 4820 03/31/94 12:25:00  
#2068 # 19-94-290074  
COOK COUNTY RECORDER

94290074

### THIS MORTGAGE

has been prepared by  
and after recording returned to:

Demetrius E. Carney, Esq.

CARNEY & BROTHERS, LTD.

30 North LaSalle Street

Suite 3100

Chicago, Illinois 60602

PIN: 19-36-321-006-0000

Common

Address:

2935 West 86th Street

Chicago, Illinois 60652

73 50

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TOGETHER WITH all buildings, structures, improvements, tenements, fixtures, easements, mineral, oil and gas rights, water rights, appurtenances thereunto belonging, title or reversion in any parcels, strips, streets and alleys adjoining the Real Estate, any land or vaults lying within any street, thoroughfare, or alley adjoining the Real Estate, and any privileges, licenses, and franchises pertaining thereunto, all of the foregoing now or hereafter erected or placed thereon all leasehold estates and all rents, issues, and profits thereof, for so long and during all such times as Mortgagor, its successors and assigns may be entitled thereto, all the estate, interest, right, title or other claim or demand which Mortgagor now has or may hereafter have or acquire with respect to: (i) proceeds of insurance in effect with respect to the Premises and (ii) any and all awards, claims for damages, judgments, settlements and other compensation made for or consequent upon the taking by condemnation, eminent domain or any like proceeding, or by any proceeding or purchase in lieu thereof, of the whole or any part of the Premises, including, without limitation, any awards and compensation resulting from a change of grade of streets and awards and compensation for severance damages (collectively "Awards") (which are each pledged primarily and on a parity with the Real Estate and not secondarily), and all apparatus, equipment or articles now or hereafter located thereon used to supply heat, gas, air conditioning, water, light, power, refrigeration (whether single units or centrally controlled), and ventilation, and any other apparatus, equipment or articles used or useful in the operation of the Premises including all additions, substitutions and replacements thereof. All of the foregoing are declared to be a part of the Real Estate whether physically attached or not. All similar apparatus, equipment, articles and fixtures hereafter placed on the Real Estate by Mortgagor or its successors or assigns shall be considered as constituting part of the Real Estate. (All of the foregoing, together with the Real Estate (or the leasehold estate if this Mortgage is on a leasehold) are hereinafter referred to as the "Premises".)

To have and to hold the Premises unto the Lender, its successors and assigns forever, for the purposes and uses set forth herein, free from all rights and benefits under any Homestead Exemption laws of the state in which the Premises is located, which rights and benefits Mortgagor does hereby expressly release and waive.

## COVENANTS & AGREEMENTS

Mortgagor and Lender covenant and agree as follows:

1. Performance of Note and Payment of Principal and Interest. Mortgagor shall promptly pay or cause to be paid when due all Secured Indebtedness and will perform and comply with each and every term, covenant and condition hereof and of the Note.

2. Funds for Taxes and Insurance. Mortgagor shall pay, or cause to be paid to Lender on each day monthly payments of principal and interest are payable under the Note, until the Note is paid in full, the following amounts (collectively "Funds"): (i) a sum equal to all general and special real estate and property taxes and assessments (including condominium and planned unit development assessments, if any) and ground rents on the Premises, if any (collectively "Impositions") next due on the Premises, all as estimated by Lender, divided by the whole number of months to elapse before the month prior to the date when such Impositions will become due and payable; provided that in the case of the first such deposit, there shall be deposited in addition an amount which, when added to the aggregate amount of monthly sums next payable under this subparagraph (i), will result in a sufficient reserve to pay the Impositions

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next becoming due one month prior to the date when such Impositions are, in fact, due and payable, plus (ii) a sum equal to an installment of the premium or premiums that will become due and payable to renew the insurance required in Paragraph 6, each installment to be in such an amount that the payment of approximately equal installments will result in the accumulation of a sufficient sum of money to pay renewal premiums for such insurance at least one (1) month prior to the expiration or renewal date or dates of the policy or policies to be renewed; if any, all as are reasonably estimated initially and from time to time by Lender on the basis of assessments and bills and reasonable estimates thereof.

The Funds shall be held by Lender or, at Lender's election, in an institution the deposits or accounts of which are insured or guaranteed by a Federal or state agency ("depository account"). Lender shall apply the Funds to pay the Impositions, except that in the event of default, Lender may apply the Funds to the Secured Indebtedness. Lender is given authority to commingle such funds with other accounts held or operated by Lender and Lender shall not be required to pay any interest or earnings on the Funds unless otherwise required by law, in which case, all interest shall accrue in the depository account and Lender may charge for so holding and applying the Funds, analyzing the account or verifying and compiling assessments and bills. Upon Mortgagor's request, Lender shall provide to Mortgagor an annual accounting of the Funds showing credits and debits to the Funds and the purpose for which each debit was made. The Funds are pledged as additional security for the sums secured by this Mortgage. The Funds are for the benefit of Mortgagor and Lender only and no third party shall have any right to or interest in the Funds or the application thereof.

If the amount of Funds held by Lender, together with the future monthly installments of Funds payable prior to the due dates of Impositions, shall exceed the amount required to pay said Impositions and insurance premiums as they fall due, such excess shall be retained by Lender or in the depository account and credited to subsequent monthly installments of Funds. If the amount of the Funds held by Lender shall not be sufficient to pay the Impositions and insurance premiums as they fall due, Mortgagor shall immediately pay or cause to be paid to Lender any amount necessary to make up the deficiency in one or more payments as Lender may require.

Upon payment in full of all Secured Indebtedness, Lender shall promptly refund to Mortgagor, or to any person to whom Mortgagor directs, any Funds held by Lender. If, under Paragraph 19, the Premises are sold or are otherwise acquired by Lender, Lender shall apply, no later than immediately prior to the sale of the Premises or its acquisition by Lender, any Funds held by Lender at the time of application as a credit against the Secured Indebtedness.

3. Application of Payments. Unless prohibited by applicable law, all payments received by Lender under this Mortgage, the Note, the Loan Agreement, if any, and all other documents given to Lender to further evidence, secure or guarantee the Secured Indebtedness (collectively, and as amended, modified or extended, the "Loan Documents") shall be applied by Lender first to payments required from Mortgagor to Lender under Paragraph 2, then to any sums advanced by Lender pursuant to any of the Loan Documents to protect the security of this Mortgage or any of the other Loan Documents and any costs or expenses in connection therewith, then to interest payable on the Note and to any prepayment premium which may be due, and then to Note principal (and if principal is due in installments, application shall be to such installments in the inverse order of their maturity).

Any applications to principal of proceeds from insurance policies, as provided in Paragraph 6, or of condemnation awards, as provided in Paragraph 10, shall not extend or postpone the due date of any monthly installments of principal or interest, or change the amount of such installments or of the other charges or payments provided in the Note or other Loan Documents.

4. Prior Encumbrances; Liens. Mortgagor shall perform all of Mortgagor's obligations under any mortgage, deed of trust or other security agreement (collectively "Prior Encumbrances") creating a lien having priority over this Mortgage, including Mortgagor's covenants to make payments when due. Any act or omission of Mortgagor which, with the giving of notice or the passage of time would constitute a default or event of default under any Prior Encumbrance or under any ground lease shall be a default under this Mortgage. Mortgagor shall promptly deliver to Lender all notices given or received of any defaults or events of default under any Prior Encumbrance or any ground lease. Although this Paragraph requires Mortgagor to comply with Prior Encumbrances, it does not entitle Mortgagor to create or allow a Prior Encumbrance that would be otherwise prohibited by this Mortgage, such as Prohibited Transfers under Paragraph 17, or prohibited by the other Loan Documents.

Mortgagor shall keep the Premises free from mechanics' and all other encumbrances and liens, except Permitted Encumbrances and statutory liens for real estate taxes and assessments not yet due and payable.

5. Taxes and Assessments; Rents. Mortgagor shall pay or cause to be paid when due all Impositions and water, sewer and other charges, fines and Impositions attributable to the Premises and leasehold payments, if any, and all other sums due under any ground lease attributable to the Premises. Mortgagor shall provide evidence satisfactory to Lender of compliance with these requirements promptly after the respective due dates for payment. Mortgagor shall pay, in full, but under protest in the manner provided by Statute, any tax or assessment Mortgagor desires to contest.

Mortgagor shall pay when due: (a) all taxes, assessments and other governmental or public charges affecting the Property, including assessments on appurtenant water stock, and any accrued interest, cost and/or penalty thereon and will submit receipts therefor to Lender at least ten (10) days before delinquency; (b) all encumbrances (including any debt secured by this Mortgage), ground rents, liens and/or charges, with interest, on the Property or any part thereof which appear to be prior, superior or on a parity hereto, and all costs and fees related thereto; (c) all charges for utilities or services including but not limited to electricity, gas, sewer, and water; and (d) all costs, fees and expenses of this Mortgage, including costs of evidence of title, trustee's fees, if any and attorney's fees in connection with sale pursuant to Paragraph 32, together with interest thereon at the Default Interest Rate (whether such sale be completed or not) which amounts shall become due upon delivery to Lender of a declaration of default and demand for sale, as hereinafter provided.

6. Insurance. Mortgagor, at its sole cost and expense, shall insure and keep insured the Premises against such perils and hazards, and in such amounts and with such limits, as Lender may from time to time require, and, in any event, including:

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(a) Insurance against loss to the Premises on an "All Risk Replacement Cost" policy form, covering insurance risks no less broad than those covered under a Standard Multi-Peril (SMP) policy form, which contains a 1987 Commercial ISO "Causes of Loss - Special Form", and such other risks as Lender may reasonably require, including, but not limited to, insurance covering the cost of demolition of undamaged portions of any portion of the Premises when required by code or ordinance and the increased cost of reconstruction to conform with current code or ordinance requirements, in an amount not less than the full replacement cost of the Premises (other than the Real Estate), including fixtures and equipment, mortgagor's interest in leasehold improvements, and the cost of debris removal, with 100% co-insurance with an agreed amount endorsement, inflation guard endorsement, and deductibles of not more than \$1,000;

(b) Rent and rental value/extra expense insurance (if the Premises are tenant occupied) in amounts sufficient to pay during any period in which the Premises may be damaged or destroyed, on a gross rents basis for a period of twelve (12) months or such greater time as Lender may deem appropriate: (i) all rents derived from the Premises and (ii) all amounts (including, but not limited to, all Impositions, utility charges and insurance premiums) required to be paid by Mortgagor or by tenants of the Premises;

(c) Business interruption/extra expense insurance (if the Premises are owner occupied) in amounts sufficient to pay during any period in which the Premises may be damaged or destroyed, on a gross income basis for a period of twelve (12) months or such greater time as Lender may deem appropriate (i) all business income derived from the Premises and (ii) all amounts (including, but not limited to, all Impositions, utility charges and insurance premiums) required to be paid by Mortgagor;

(d) Broad form boiler and machinery insurance including business interruption/extra expense and rent and rental value insurance, on all equipment and objects customarily covered by such insurance and/or involved in the heating, cooling, electrical and mechanical systems of the Premises (if any are located at the Premises), providing for full repair and replacement cost coverage, and other insurance of the types and in amounts as Lender may reasonably require, but in no event less than that customarily carried by persons owning or operating like properties;

(e) During the making of any alterations or improvements to the Premises (i) insurance covering claims based on the owner's or employer's contingent liability not covered by the insurance provided in subsection (h) below and (ii) workers' compensation insurance covering all persons engaged in such alterations or improvements;

(f) Insurance against loss or damage by flood or mud slide in compliance with the Flood Disaster Protection Act of 1973, as amended from time to time, or other applicable legislation, if the Premises are now, or at any time while the Secured Indebtedness remains outstanding shall be, situated in any area which an appropriate governmental authority designates as a special flood hazard area, Zone A or Zone V, in amounts equal to the full replacement value of all above grade structures on the Premises;

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(g) Insurance against loss or damage by earthquake, if the Premises are now, or at any time while the Secured Indebtedness remains outstanding shall be, situated in any area which is classified as a Major Damage Zone, Zones 3 and 4, by the International Conference of Building Officials in an amount equal to the probable maximum loss for the Premises, fixtures and equipment, plus the cost of debris removal;

(h) Commercial general public liability insurance, with the location of the Premises designated thereon, against death, bodily injury and property damage arising in connection with the Premises with Mortgagor listed as the named insured with such limits as Lender may reasonably require, but in no event less than \$1,000,000, and written on a 1986 Standard ISO occurrence basis form or equivalent form, and excess umbrella liability insurance with such limits as the Lender may reasonably require, but in no event less than \$500,000; and

(i) Such other insurance relating to the Premises and the use and operation thereof, as Lender may, from time to time, reasonably require, including, but not limited to, drumshop, products liability and worker's compensation insurance.

All insurance shall: (i) be carried in companies with a Best's rating of A+:XV or better, or otherwise acceptable to Lender; (ii) amount, form, content and expiration date acceptable to Lender; (iii) provide thirty (30) days' advance written notice to Lender before any cancellation, material modification or notice of non-renewal; (iv) provide that no claims shall be paid thereunder without ten (10) days' advance written notice to Lender; and (v) contain a Non-Contributory Standard Mortgagee Clause and the Lender's Loss Payable Endorsement (Form 438 BFU NS), or their equivalents.

All physical damage policies and renewals shall contain a standard mortgage clause naming the Lender as mortgagee, which clause shall expressly state that any breach of any condition or warranty by Mortgagor shall not prejudice the rights of Lender under such insurance; and a loss payable clause in favor of the Lender for personal property, contents, inventory, equipment, loss of rents and business interruption. All liability policies and renewals shall name the Lender as an additional insured. No additional parties shall appear in the mortgage or loss payable clause without Lender's prior written consent. All deductibles shall be in amounts acceptable to Lender. In the event of the foreclosure of this Mortgage or any other transfer of title to the Premises in full or partial satisfaction of the Secured Indebtedness, all right, title and interest of Mortgagor in and to all insurance policies and renewals thereof then in force shall pass to the purchaser or grantee.

Any notice pertaining to insurance and required pursuant to this Paragraph 6 shall be given in the manner provided in Paragraph 15 below at Lender's address stated above (Attention: Mortgage Loan Department Supervisor). The insurance shall be evidenced by the original policy or a true and certified copy of the original policy, which policy shall provide that it shall not be modified or canceled without thirty (30) days' written notice to Lender. Mortgagor shall use its best efforts to deliver originals of all policies and renewals (or certificates evidencing the same), marked "paid," to Lender at least thirty (30) days before the expiration of existing policies and in any event, Mortgagor shall deliver originals of such policies or certificates to Lender at least fifteen (15) days before the expiration of existing policies. If Lender has not received satisfactory evidence of such renewal or substitute insurance in the time frame herein

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specified, Lender shall have the right, but not the obligation, to purchase such insurance for Lender's interest only. Any amounts so disbursed by Lender pursuant to this Paragraph shall be a part of the Secured Indebtedness and shall bear interest at the default interest rate provided in the Note. Nothing contained in this Paragraph shall require Lender to incur any expense or take any action hereunder, and inaction by Lender shall never be considered a waiver of any right accruing to Lender on account of this Paragraph.

Mortgagor shall not carry any separate insurance on the Premises concurrent in kind or form with any insurance required hereunder or contributing in the event of loss without Lender's prior written consent, and any such policy shall have attached standard non-contributing mortgagee clause, with loss payable to Lender, and shall meet all other requirements set forth herein.

At Lender's option, but not more often than annually, Mortgagor shall provide Lender with a report from an independent insurance consultant of regional or national prominence, acceptable to Lender, certifying that Mortgagor's insurance is in compliance with this Paragraph 6.

In the event of the foreclosure of this Mortgage, or other transfer of the title to the Property in extinguishment, in whole or in part, of the indebtedness secured hereby, all right, title and interest of Mortgagor in and to any insurance policy, or premiums or payments in satisfaction of claims of any other rights thereunder then in force, shall pass to the purchaser or grantee notwithstanding the amount of any bid at such foreclosure sale. Nothing contained herein shall prevent the accrual of interest as provided in the Note on any portion of the principal balance due under the Note until such time as the Proceeds (as defined below) are actually received and applied to reduce the principal balance outstanding.

Mortgagor shall give immediate notice of any loss or happening of any casualty to the Property to Lender. Mortgagor shall also give prompt written notice to Lender describing the nature and cause of such casualty and the extent of the damage or destruction to the Property, whether or not required to be insured against. In case of any loss covered by any of such policies, Lender is authorized to adjust, collect and compromise in its discretion, all claims thereunder and in such case, Mortgagor covenants to sign upon demand, or Lender may sign or endorse on Mortgagor's behalf, all necessary proofs of loss, receipts, releases, and other papers required by the insurance companies to be signed by Mortgagor. Mortgagor hereby irrevocably appoints Lender as its attorney-in-fact for the purposes set forth in the preceding sentence. Lender may deduct from such insurance proceeds any expenses incurred by Lender in the collection and settlement thereof, including, but not limited to, attorneys' and adjusters' fees and charges.

If all or any part of the Premises shall be damaged or destroyed by fire or other casualty or shall be damaged or taken through the exercise of the power of eminent domain or other cause described in Paragraph 6, Mortgagor shall promptly and with all due diligence restore and repair the Premises whether or not the net insurance proceeds, award or other compensation (collectively, the "Proceeds") are sufficient to pay the cost of such restoration or repair. Lender may require that all plans and specifications for such restoration or repair be submitted to and approved by Lender in writing prior to commencement of the work. At Lender's election, to be exercised by written notice to Mortgagor within thirty (30) days following Lender's

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unrestricted receipt in cash or the equivalent thereof of the Proceeds, the entire amount of the Proceeds, shall either: (i) be applied to the Secured Indebtedness in such order and manner as Lender may elect or (ii) be made available to Mortgagor on the terms and conditions set forth in this Paragraph 6 to finance the cost of restoration or repair with any excess to be applied to the Secured Indebtedness in the inverse order of maturity. Any application of the Proceeds to reduce the Secured Indebtedness shall constitute a voluntary prepayment subject to any prepayment premiums or fees provided in the Note or other Loan Documents. Lender may apply the Proceeds to such prepayment premiums or fees. If the amount of the Proceeds to be made available to Mortgagor pursuant to this Paragraph 6 is less than the cost of the restoration or repair as estimated by Lender at any time prior to completion thereof, Mortgagor shall cause to be deposited with Lender the amount of such deficiency within thirty (30) days of Lender's written request therefor (but in no event later than the commencement of the work) and Mortgagor's deposited funds shall be disbursed prior to the Proceeds. If Mortgagor is required to deposit funds under this Paragraph 6, the deposit of such funds shall be a condition precedent to Lender's obligation to disburse the Proceeds held by Lender hereunder.

The amount of the Proceeds, which is to be made available to Mortgagor, together with any deposits made by Mortgagor hereunder, shall be held by Lender to be disbursed from time to time to pay the cost of repair or restoration either, at Lender's option, to Mortgagor or directly to contractors, subcontractors, material suppliers and other persons entitled to payment in accordance with and subject to such conditions to disbursement as Lender may impose to assure that the work is fully completed in a good and workmanlike manner and paid for and that no liens or claims arise by reason thereof. Lender shall require (i) evidence of the estimated cost of completion of such restoration or repair satisfactory to Lender; (ii) such architect's signed estimate of the total cost of restoration, architect's certificates, approved by Lender ("Approved Plans"), waivers of lien, contractor's sworn statements, title insurance endorsements, plats of survey, and other evidence of cost, payment and performance acceptable to Lender; (iii) copies of all permits and approvals required by law in connection with the commencement and conduct of the restoration work; and, (iv) a contract for construction executed by Mortgagor and a contractor satisfactory to Lender in form, scope and substance satisfactory to Mortgagor for the performance of the work. If Lender requires mechanics' and materialmen's lien waivers in advance of making disbursements, such waivers shall be deposited with an escrow trustee acceptable to Lender pursuant to a construction loan escrow agreement satisfactory to Lender. Mortgagor shall not commence any portion of the Work, other than temporary work to protect the Premises, or prevent interference with business, until Mortgagor shall have complied with all of Lender's requirements as set forth in this Paragraph 6. No payment made prior to final completion of the repair or restoration shall exceed ninety percent (90%) of the value of the work performed from time to time. Lender may commingle any such funds held by it with its other general funds. Lender shall not be obligated to pay interest in respect of any such funds held by it nor shall Mortgagor be entitled to a credit against any of the Secured Indebtedness except and to the extent the funds are applied thereto pursuant to this Paragraph 6. Without limitation of the foregoing, Lender shall have the right at all times to apply such funds to the cure of any Event of Default or the performance of any obligations of Mortgagor under the Loan Documents.

7. Use, Preservation and Maintenance of Premises. Mortgagor shall keep the Premises in good condition and repair and shall not commit waste or permit impairment or deterioration of the Premises. Mortgagor shall not allow, store, treat or dispose of Hazardous

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Material as defined in Paragraph 33, nor permit the same to exist or be stored, treated or disposed of, from or upon the Premises. Mortgagor shall promptly restore or rebuild any buildings or improvements now or hereafter on the Premises which may become damaged or destroyed. Mortgagor shall comply with all requirements of law or municipal ordinances with respect to the use, operation, and maintenance of the Premises, including all environmental, health and safety laws and regulations, and shall make no material alterations in the Premises except as required by law, without the prior written consent of Lender. Mortgagor shall not grant or permit any easements, licenses, covenants or declarations of use against the Premises.

8. Protection of Lender's Security. If Mortgagor fails to perform any of the covenants and agreements contained in this Mortgage, the Note or the other Loan Documents, or if any action or proceeding is threatened or commenced which materially affects Lender's interest in the Premises, then Lender, at Lender's option, upon notice to Mortgagor, may make such appearances, disburse such sums, including reasonable attorneys' fees, and take such action as it deems expedient or necessary to protect Lender's interest, including (i) making repairs; (ii) discharging Prior Encumbrances in full or part; (iii) paying, settling, or discharging tax liens, mechanics' or other liens, and paying ground rents (if any); (iv) procuring insurance; and (v) renting, operating and managing the Premises and paying operating costs and expenses, including management fees, of every kind and nature in connection therewith, so that the Premises shall be operational and usable for its intended purposes. Lender, in making such payments of Impositions and assessments, may do so in accordance with any bill, statement, or estimate procured from the appropriate public office without inquiry into the accuracy of same or into the validity thereof.

Any amounts disbursed by Lender pursuant to this Paragraph 8 shall be a part of the Secured Indebtedness and shall bear interest at the default interest rate provided in the Note (the "Default Rate"). Nothing contained in this Paragraph 8 shall require Lender to incur any expense or take any action hereunder, and inaction by Lender shall never be considered a waiver of any right accruing to Lender on account of this Paragraph 8.

It is understood and agreed that neither the foregoing Assignment of Rents to Lender nor the exercise by Lender of any of its rights or remedies under this Paragraph 20 or under Paragraph 32 hereof shall be deemed to make Lender a "Mortgagee-in-possession" or otherwise responsible or liable in any manner with respect to the Premises or the use, occupancy, enjoyment or operation of all or any portion thereof, unless and until Lender assumes actual possession thereof, nor shall appointment of a receiver for the Premises by any court at the request of Lender or by agreement with Mortgagor or the entering into possession of the Premises or any part thereof by such receiver be deemed to make Lender a "mortgagee-in-possession" or otherwise responsible or liable in any manner with respect to the Property or the use, occupancy, enjoyment or operation of all or any portion thereof.

Notwithstanding anything to the contrary contained herein or in the Note secured hereby, so long as no default by Mortgagor in the payment of any indebtedness secured hereby or in the performance of any obligation, covenant or agreement contained herein, in the Note or in any other agreement given as security for the indebtedness evidenced by the Note shall exist and be continuing, Mortgagor shall have the right to collect all Rents from the Premises and to retain, use and enjoy the same.

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9. Inspection of Premises and Books and Records. Mortgagor shall permit Lender and its representatives and agents to inspect the Premises from time to time during normal business hours and as frequently as Lender requests. Mortgagor shall keep and maintain or cause to be kept and maintained full and correct books and records and accounts at the office of the Mortgagor, reflecting in detail the income and expenses in connection with the operation of the Premises. From time to time upon not less than five (5) days demand, Mortgagor shall permit Lender or its agents to examine and copy such books and records and all supporting vouchers and data at its offices or at the address identified above and to make copies or extracts thereof as Lender or its designee shall desire.

10. Condemnation. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Premises, or part thereof, or for conveyance in lieu of condemnation ("Condemnation Proceeds") are hereby assigned and shall be paid directly to Lender. Mortgagor hereby grants a security interest to Lender in and to such proceeds. Lender is authorized to collect such proceeds and, at Lender's sole option and discretion, after deducting therefrom all reasonable expenses, including attorney's fees, apply or release the Condemnation Proceeds may apply said proceeds either to restoration or repair of the Premises or in payment of the Secured Indebtedness. In the event the Premises are restored, Lender may pay the condemnation proceeds in accordance with its customary construction loan payment procedures, and may charge its customary fee for such services. In the event the condemnation proceeds are applied to reduce the Secured Indebtedness, any such application shall constitute a prepayment.

11. Mortgagor Not Released; Forbearance by Lender Not a Waiver; Remedies Cumulative. Any extension or other modification granted by Lender to any successor in interest of Mortgagor of the time for payment of all or any part of the Secured Indebtedness shall not operate to release, in any manner, Mortgagor's liability. Any forbearance or inaction by Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the later exercise of any such right or remedy. Any acts performed by Lender to protect the security of this Mortgage, as authorized by Paragraph 8 or otherwise, shall not be a waiver of Lender's right to accelerate the maturity of the Indebtedness. All remedies provided in this Mortgage are distinct and cumulative to any other right or remedy under this Mortgage or afforded by law or equity, and may be exercised concurrently, independently or successively. No consent or waiver by Lender to or of any breach or default by Mortgagor shall be deemed a consent or waiver to or of any other breach or default.

12. Successors and Assigns Bound; Joint and Several Liability; Co-signers. The covenants and agreements contained herein shall bind, and the rights hereunder shall inure to, the respective heirs, executors, legal representatives, successors and permitted assigns of Lender and Mortgagor. If this Mortgage is executed by more than one Mortgagor, each Mortgagor shall be jointly and several liable hereunder.

13. Excess Loan Charges. If the Loan secured by this Mortgage is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Maker which exceeded permitted limits ("Excess Loan Charges") will, at Lender's option, either be refunded to Maker or applied

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as a credit against the then outstanding principal balance or accrued and unpaid interest thereon. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge under the Note. Neither Mortgagor nor any other guarantor or obligor on the Note shall have any action against Lender for any damages whatsoever arising from the payment of Excess Loan Charges.

14. Legislation Affecting Lenders' Rights. If an enactment, modification or expiration of an applicable governmental law, ruling or regulation has the effect of rendering any provision of the Note, this Mortgage or any of the other Loan Documents unenforceable according to its terms, Lender, at its option, may require immediate payment in full of all sums secured by this Mortgage and may invoke any remedies permitted by Paragraph 19.

15. Notice. Except for any notice required under applicable law to be given in another manner, any notices required or given under this Mortgage shall be in writing and shall be deemed to have been properly given, served and received (i) if delivered by messenger, when delivered, (ii) if mailed in the United States mail, certified or registered, postage prepaid, return receipt requested, on the third business day after deposit in the mail, (iii) if telexed, telegraphed or telecopied, six (6) hours after being dispatched by telex, telegram or telecopy, if such sixth hour falls on a business day within the hours of 8:00 a.m. through 5:00 p.m. of the time in effect at the place of receipt, or at 8:00 a.m. on the next business day thereafter if such sixth hour is later than 5:00 p.m., or (iv) if delivered by reputable overnight express courier, freight prepaid, the next business day after delivery to such courier. Notices shall be given to Mortgagor at the address provided below and to Lender at Lender's address stated above (Attention: Mortgage Loan Department Supervisor). Any party hereto may change the address to which notices are given by notice as provided herein.

16. Governing Law; Severability. The laws of Illinois shall govern the interpretation and enforcement of this Mortgage. The foregoing sentence shall not limit the applicability of Federal law to this Mortgage. If any provision or clause of this Mortgage, or the application thereof, is adjudicated to be invalid or unenforceable, the validity or enforceability of the remainder of this Mortgage shall be construed without reference to the invalid or unenforceable provision or clause.

17. Prohibitions on Transfer of the Premises or of an Interest in Mortgagor. It shall be an immediate default if, without the prior written consent of Lender, which consent may be granted or withheld at Lender's sole discretion, Mortgagor shall create, effect or consent to or shall suffer or permit any conveyance, sale (including an installment sale), assignment, transfer, lien, pledge, hypothecation, mortgage, security interest, or other encumbrance or alienation, whether by operation of law, voluntarily or otherwise, (collectively "Transfer") of (1) the Premises or any part thereof or interest therein; or (2) all or a portion of the beneficial interest of Mortgagor or the power of direction; (3) if Mortgagor consists of or includes a Corporation, all or a portion of the stock of such corporation that results or could result in a material change in the identity of the person(s) or entity(ies) previously in control of such corporation; (each of the foregoing is referred to as a "Prohibited Transfer"). In the event of such default, Lender, at its sole option, may declare the entire unpaid balance, including interest, immediately due and payable.

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18. Expenses. Upon election of Lender's employment of an attorney is hereby authorized and Mortgagor shall pay all attorneys' fees, costs and expenses, including expenses of retaking, holding, preparing for sale, or selling (including cost of evidence or search of title) in connection with any action or actions which may be brought for the foreclosure of this Mortgage (including such expenses incurred prior to recordation of a notice of default) and/or for possession of the Premises and/or for the protection of or the defense of the priority of the lien provided for by this Mortgage and for the appointment of a receiver and/or for the enforcement of any and all covenants or rights contained in or secured by this Mortgage and/or any case or proceeding under the Federal Bankruptcy Code or any similar state or federal law.

Mortgagor will pay immediately without demand after expenditure all sums expended or expense incurred by Lender, including, without limitation, attorneys' fees, under any of the terms of this Mortgage, with interest from accruing thereafter at the Default Rate.

Mortgagor will pay the amount demanded by Lender or its authorized loan servicing agent for any statement regarding the obligations secured hereby; provided, however, that such amount may not exceed the maximum amount allowed by law at the time request for the statement is made.

19. Event of Default. Each of the following shall constitute an event of default ("Event of Default") under this Mortgage.

(a) Mortgagor's failure to pay any amount due herein or secured hereby, or any installment of principal, interest when due and payable whether at maturity or by acceleration or otherwise under the Note, this Mortgage, or any other Loan Document, or any other indebtedness or payments of money evidenced by the Note or secured hereby which failure continues for more than five (5) days after the due date; provided, however, that this grace period shall not apply to the other sub-paragraphs of this Paragraph 19;

(b) Mortgagor's failure to perform or observe any other covenant, agreement, or other provision contained in the Note, this Mortgage (other than a Event of Default described elsewhere in this Paragraph 19) or any other Loan Document and such failure continues for a period of twenty-one (21) days after the earlier of Mortgagor's becoming aware of such failure or the effective date of notice thereof given by Lender to Mortgagor; provided however, that this grace period shall not apply to the other sub-paragraphs of this Paragraph 19;

(c) If any representation or disclosure made to Lender by Mortgagor proves to be materially false or misleading on the date as of which made, whether or not that representation, disclosure or warranty appears in the Loan Documents;

(d) A Prohibited Transfer occurs;

(e) Mortgagor shall: (i) file a voluntary petition in bankruptcy, insolvency, debtor relief or for arrangement, reorganization or other relief under the federal bankruptcy code or any similar state or federal law; (ii) consent to or suffer the appointment of or taking possession by a receiver, liquidator, or trustee, (or similar

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official) of the Mortgagor or for any part of the Premises or any substantial part of the Mortgagor's other property; (iii) make any assignment for the benefit of Mortgagor's creditors; (iv) fail generally to pay Mortgagor's debts as they become due; or (v) a court having jurisdiction shall enter a decree or order for relief in respect of Mortgagor or in any involuntary case brought under any bankruptcy, insolvency, debtor relief, or similar law:

(f) All or a substantial part of Mortgagor's are attached, seized, subjected to a writ or distress warrant, or are levied upon;

(g) The death of Mortgagor or the Guarantor, if any;

(h) This Mortgage shall not constitute a valid lien on and security interest in the Premises (subject only to the Permitted Encumbrances), or if such lien and security interest shall not be perfected;

(i) The Premises are abandoned;

(j) An indictment or other charge is filed against the Mortgagor, in any jurisdiction, under any federal or state law, for which forfeiture of the Premises or of other collateral securing the Loan, or of any other funds, property or other assets of Mortgagor or Lender is a potential penalty unless such charge is dismissed within ten (10) days after filing;

(k) A default under that certain Mortgage dated June 6, 1989 and recorded in the Office of the Cook County, Illinois Recorder of Deeds as Document No. \_\_\_\_\_; or

(l) A default under that certain Mortgage, Assignment of Leases and Rents, and Security Agreement dated March 11, 1994 and recorded in the Office of the Cook County, Illinois Recorder of Deeds as Document No. \_\_\_\_\_.

20. **ACCELERATION; REMEDIES.** AT ANY TIME AFTER AN EVENT OF DEFAULT, LENDER, AT LENDER'S OPTION, MAY DECLARE ALL SUMS SECURED BY THIS MORTGAGE AND THE OTHER LOAN DOCUMENTS TO BE IMMEDIATELY DUE AND PAYABLE WITHOUT FURTHER DEMAND AND MAY FORECLOSE THIS MORTGAGE BY JUDICIAL PROCEEDING. LENDER SHALL BE ENTITLED TO COLLECT IN SUCH PROCEEDING ALL EXPENSES OF FORECLOSURE, INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES AND COSTS INCLUDING ABSTRACTS AND TITLE REPORTS, ALL OF WHICH SHALL BECOME A PART OF THE SECURED INDEBTEDNESS AND IMMEDIATELY DUE AND PAYABLE, WITH INTEREST AT THE DEFAULT RATE. THE PROCEEDS OF ANY FORECLOSURE SALE OF THE PREMISES SHALL BE APPLIED AS FOLLOWS: FIRST, TO ALL COSTS, EXPENSES AND FEES INCIDENT TO THE FORECLOSURE PROCEEDINGS; SECOND, AS SET FORTH IN PARAGRAPH 3 OF THIS MORTGAGE; AND THIRD, ANY BALANCE TO MORTGAGOR OR AS A COURT MAY DIRECT.

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21. Assignment of Leases and Rents. All right, title, and interest of Mortgagor in and to those leases, if any, listed on Exhibit C ("Identified Leases"), and all present and future leases affecting the Premises, written or oral (collectively, "Leases"), and all rents, income, receipts, revenues, issues, avails and profits from or arising out of the Premises whether now due, past due or to become due (collectively "Rents") are hereby absolutely and unconditionally transferred and assigned to Lender as further security for the payment of the Secured Indebtedness, and Mortgagor hereby grants a security interest to Lender in and to the same. Mortgagor hereby gives to and confers upon Lender the right, power and authority to collect Rents. Mortgagor irrevocably appoints Lender as its true and lawful attorney-in-fact (coupled with an interest and irrevocable) at the option of Lender at any time to demand, receive and enforce payment, to give receipts, releases and satisfactions and to sue, either in the name of Mortgagor or in the name of Lender, for all Rents and apply the same to the Secured Indebtedness. If requested by Lender, Mortgagor shall submit all future Leases affecting the Premises to the Lender for its approval prior to execution, and all approved and executed Leases shall be specifically assigned to Lender by an instrument satisfactory to Lender. Each Lease shall, at the option of Lender, be paramount or subordinate to this Mortgage. Mortgagor shall furnish Lender with executed copies of each Lease and, if requested by Lender, with estoppel letters from each tenant, which estoppel letters shall be in a form satisfactory to Lender and shall be delivered not later than thirty (30) days after Lender's written demand.

Each lease of a portion of any building which constitutes a part of the Premises shall be assigned to Lender. Each such assignment shall be recorded and shall either be acknowledged by the tenant thereunder or Lender shall be furnished with certified mail receipts evidencing each such tenant's receipt of notice of the assignment of its lease.

Unless otherwise approved in writing by Lender, each lease of a portion of any building which constitutes a part of the Premises shall be absolutely subordinate to the lien of this Mortgage but shall contain a provision satisfactory to Lender that in the event of the exercise of a judicial foreclosure hereunder, such lease, at the sole and exclusive option of the purchaser at such sale, shall not be terminated and the tenant thereunder shall attach to such purchaser and, if requested to do so, shall enter into a new lease for the balance of the term of such lease then remaining upon the same terms and conditions.

If, without Lender's prior written consent, Mortgagor: (i) as lessor, fails to perform and fulfill any term, covenant, or provision in any Lease; (ii) suffers or permits to occur any breach or default under the provisions of any separate assignment of any Lease given as additional security for the Secured Indebtedness; (iii) fails to fully protect, insure, preserve, and cause continued performance or fulfillment of the terms, covenants, or provisions, which are required to be performed by the lessee or lessor of any other Lease or Leases hereafter assigned to Lender; (iv) cancels, terminates, or materially amends or modifies any Lease; or (v) permits or approves an assignment by lessee of a Lease or a subletting of all or any part of the Premises demised in the Lease; then such occurrence shall constitute an Event of Default hereunder.

Lender shall have the right to assign Mortgagor's right, title and interest in any Leases to any subsequent holder of this Mortgage or the Note and other Loan Documents or to any person acquiring title to all or any part of the Premises through foreclosure or otherwise.

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Upon an Event of Default, this Mortgage shall constitute a direction to each lessee under the Leases and each guarantor thereof, if any, to pay all Rents directly to Lender without proof of the Event of Default. While this assignment is a present assignment, Lender shall not exercise any of the rights or powers conferred upon it by this Paragraph 19 until an Event of Default shall occur under this Mortgage.

If Mortgagor as lessor shall neglect or refuse to perform and keep all of the covenants and agreements contained in the Lease or Leases, then Lender may perform and comply with any such Lease covenants and agreements. All related costs and expenses incurred by the Lender shall become a part of the Secured Indebtedness and shall be due and payable upon demand by Lender with interest thereon accruing thereafter at the Default Rate.

Lender, however, shall not be obligated to perform or discharge any obligation, duty or liability under any Lease. Mortgagor shall, defend, protect, indemnify and hold Lender harmless from and against any and all liability, loss, cost or damage to Lender under the Leases or under or by reason of their assignments and of and from any and all claims and demands whatsoever which may be asserted against Lender by reason of any alleged obligations or undertakings on its part to perform or discharge any Lease terms, covenants or agreements. The amount of any such liability, loss or damage arising under the Leases or under or by reason of their assignment, or in the defense of any claims or demands, including costs, expenses and reasonable attorneys' fees, incurred by Lender shall be a part of the Secured Indebtedness due and payable upon demand with interest thereon accruing thereafter at the Default Rate.

22. Appointment of Receiver. Upon acceleration under Paragraphs 17 and 19, and without further notice to Mortgagor, Lender shall be entitled to have a receiver appointed by a court to enter upon, take possession of and manage the Premises and to collect the Rents from the Premises including those past due. The receiver shall have the power to collect the Rents from the time of acceleration through the pendency of any foreclosure proceeding and during the full statutory period of redemption, if any. All Rents collected by the receiver shall be applied as the appointing court may direct and, in the absence of such direction, first to payment of the costs and expenses of the management of the Premises and collection of Rents including, but not limited to, receiver's fees, premiums on receiver's bonds and reasonable attorneys' fees, and then as provided in Paragraph 3. The receiver shall be liable to account only for those Rents actually received.

23. Release. Upon payment of all Secured Indebtedness, Lender shall release this Mortgage upon payment by Mortgagor of all costs and fees to release same, if any. Mortgagor shall be responsible for recording the release, including all related costs of recordation.

24. Security Agreement. Without limiting any other provisions of this Mortgage, this Mortgage constitutes a Security Agreement under the Uniform Commercial Code of the State of Illinois, as amended from time to time, (herein called the "Code") with respect to all fixtures, apparatus, equipment or articles, and all replacements and substitutions, now or hereafter located on the Premises as set forth in the description of the Premises above, including but not limited to the air-conditioning, heating, gas, water, power, light, refrigeration, and ventilation systems which are presently located at the Premises, and with respect to all Awards, and all Funds and other sums which may be deposited with Lender pursuant hereto (all for the purposes of this paragraph called "Collateral"), and Mortgagor, as debtor, hereby grants to Lender, as secured

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party, a security interest in such Collateral. All of the terms, provisions, conditions and agreements contained in this Mortgage pertain and apply to the Collateral as fully and to the same extent as to any other property comprising the Premises. When the Secured Indebtedness shall become due, whether by acceleration or otherwise, Lender shall have all remedies of a secured party under the Code. This Mortgage is intended to be a financing statement with respect to any of the Collateral which constitute "fixtures" within the meaning of the Code. Mortgagor shall execute and deliver to Lender any other financing statements necessary to perfect the security interest in the Collateral created hereby. Any Code requirement for reasonable notice shall be met if such notice is delivered as provided herein at least five (5) days prior to the time of any sale, disposition, or other event or matter giving rise to the notice (which period of time and method of notice is agreed to be commercially reasonable).

Lender may proceed as to the Collateral in accordance with Lender's rights and remedies in respect to the Premises or sell the Collateral separately and without regard to the remainder of the Premises in accordance with Lender's rights and remedies provided by the Code as well as other rights and remedies available at law or in equity.

Mortgagor waives all rights, legal and equitable, it may now or hereafter have to require marshalling of assets or to require upon foreclosure sales of assets in a particular order. Each successor and assign of Mortgagor, including without limitation, a holder of a lien subordinate to the lien created by this Mortgage (without affirming that Mortgagor has a right to grant an interest in, or subordinate lien on, the Premises, except as expressly provided herein), by acceptance of its interest or lien agrees that it shall be bound by the above waiver, as if it gave the waiver itself.

It is understood and agreed that, in order to protect Lender from the effect of the Code, in the event that (i) Mortgagor intends to purchase any good which may become fixtures attached to the Premises, or any part thereof, and (ii) such goods will be subject to a purchase money security interest held by a seller or any other party:

(a) Mortgagor shall, before executing any security agreement or other document evidencing such security interest, obtain the prior written approval of Lender, and all requests for such written approval shall be in writing and contain the following information:

- (1) a description of the fixtures to be replaced, added to, installed or substituted;
- (2) the address at which the fixtures will be replaced, added to, installed or substituted; and
- (3) the name and address of the proposed holder and proposed amount of the security interest.

Mortgagor's execution of any such security agreement or other document evidencing such security interests without Lender's prior written approval shall be a material breach of Mortgagor's covenants under this Mortgage, and shall, at the option of Lender, entitle Lender to all rights and remedies provided for herein upon default. No consent by Lender pursuant to

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this subparagraph shall be deemed to constitute an agreement to subordinate any right of Lender in fixtures or other property covered by this Mortgage.

(b) If at any time Mortgagor fails to make any payment on an obligation secured by a purchase money security interest in the Collateral, Lender, at its option, may at any time pay the amount secured by such security interest and the amount so paid shall be (i) secured by this Mortgage and shall be a lien on the Premises having the same priorities as the liens and security interests created by this Mortgage, and (ii) payable on demand with interest at the Default specified in the Note for the time of such payment. If Mortgagor shall fail to make such payment to Lender within ten (10) days after demand, the entire principal sum secured hereby with all unpaid interest accrued thereon and any other amounts due under any other Loan Documents, shall, at the option of Lender, become due and payable immediately.

(c) Lender shall have the right to acquire by assignment from the holder of such security interest any and all contract rights, accounts receivable, negotiable or non-negotiable instruments, or other evidence of Mortgagor's indebtedness for such Collateral, and, upon acquiring such interest by assignment, shall have the right to enforce the terms and provisions of the Code then in effect, and in accordance with any other provisions of law.

(d) Whether or not Lender has paid the indebtedness secured by or taken an assignment of such security interest, Mortgagor covenants to pay all sums and perform all obligations secured thereby, and if Mortgagor at any time shall be in default for a period of ten (10) days under such security agreement, it shall be a material breach of Mortgagor's covenants under this Mortgage, and Lender may, at its option, declare the principal sum secured herewith with all unpaid interest accrued thereon and any other amounts due under any other Loan Documents, immediately due and payable, time being of the essence.

(e) The provisions of subparagraphs (b), (c) and (d) above shall not apply if the goods which may become fixtures are of at least equivalent value and quality as any property being replaced and if the rights of the party holding such security interest have been expressly subordinated, at no cost to Lender, the lien of this Mortgage in a manner satisfactory to Lender, including without limitation, at the option of Lender, providing to Lender a satisfactory opinion of counsel to the effect that this Mortgage constitutes a valid and subsisting first lien on such fixtures which is not subordinate to the lien of such security interest under any applicable law, including without limitation, the provisions of the Code.

25. Waiver of Redemption. Notwithstanding anything to the contrary herein contained, to the fullest extent permitted by the laws of the State of Illinois, Mortgagor hereby waives any and all rights of redemption from sale under any order, judgment or decree of foreclosure, on behalf of Mortgagor, and on behalf of (i) each and every person acquiring any interest in or title to the Premises subsequent to the date of this Mortgage; and, (ii) all other persons.

26. Business Loan. Mortgagor hereby represents that: (a) the proceeds of the Secured Indebtedness (the "Loan") will be used for the purposes specified in Part 815 Section 205/4 *et seq.*, of the Illinois Compiled Statutes Annotated 1993; (b) the Loan constitutes a "business loan" within the purview of that Section; (c) the Loan is a transaction exempt from the Truth in Lending Act, 15 U.S.C. §1601, *et seq.*; and (d) the proceeds of the Indebtedness

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will not be used for the purchase of registered equity securities within the purview of Regulation "U" issued by the Board of Governors of the Federal Reserve System.

27. Waiver of Statute of Limitations. The right to plead any and all statutes of limitation as a defense to any demand secured by or made pursuant to this Mortgage is hereby waived to the full extent permitted by law.

28. Zoning. Mortgagor's use and operation of the Premises shall comply with all applicable zoning laws, regulations and ordinances (including health and safety laws). The Premises are zoned to permit the current operation and use of the Premises. Mortgagor will not initiate or acquiesce in a zoning reclassification without Lender's consent.

29. Waiver of Jury Trial. To the full extent not prohibited by applicable law, Mortgagor hereby waives any right to a trial by jury in any action or proceeding to enforce or defend any rights (i) under this Mortgage, the other Loan Documents or under any instrument, document or agreement delivered or which may in the future be delivered in connection therewith; or (ii) arising from any banking relationship existing in connection with this Mortgage or the other Loan Documents. Mortgagor agrees that any such action or proceeding shall be tried before a court and not before a jury.

30. Interpretation. This Mortgage shall be construed pursuant to the laws of the State of Illinois. The headings of sections and paragraphs in this Mortgage are for convenience only and in no way limit or define the content, scope, or intent of the provisions. The use of singular and plural nouns, and masculine, feminine, and neuter pronouns, shall be fully interchangeable, where the context so requires. The term "and/or" as used herein means one or the other or both, or any one or all, or any combination of the things or persons in connection with which the words are used. If any provision of this Mortgage, or any paragraph, sentence, clause, phrase or word, or the application thereof, in any circumstances, is adjudicated to be invalid, the validity of the remainder of this Mortgage shall be construed as if such invalid part were never included. Time is of the essence of the payment and performance of this Mortgage.

31. Time of the Essence. Time is of the essence of the Note, this Mortgage, the other Loan Documents and the performance of all provisions hereof and thereof.

32. Compliance with Illinois Mortgage Foreclosure Law. If any provision in this Mortgage shall be inconsistent with any provision of the Illinois Mortgage Foreclosure Law (Part 15, Sections 5/15-1101 *et seq.*, Illinois Compiled Statutes Annotated 1993) (the "Act") the provisions of the Act shall take precedence over the Mortgage provisions, but shall not invalidate or render unenforceable any other Mortgage provision that can be construed in a manner consistent with the Act.

If any Mortgage provision shall grant to Lender any rights or remedies upon Mortgagor's default which are more limited than the rights that would otherwise be vested in Lender under the Act in the absence of such provision, Lender shall be vested with the rights granted in the Act to the full extent permitted by law.

Without limiting the generality of the foregoing, all expenses incurred by Lender to the extent reimbursable under Sections 5/15-1110 and 5/15-1112 of the Act, whether incurred before

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or after any decree or judgment of foreclosure, and whether or not enumerated in Paragraph 21 of this Mortgage, shall be added to the Indebtedness secured by this Mortgage or by the judgment of foreclosure.

## 33. Environmental Matters

### A. Definitions. For purposes of this Paragraph 33:

1. "Premises" means: The Real Estate including, improvements presently and hereafter situated thereon or thereunder, construction material used in such improvements, surface and subsurface soil and water, areas leased to tenants, and all business, uses, and operations thereon.

2. "Environmental Laws" means:

(a) any federal statute, law, code, rule, regulation, ordinance, order, standard, permit, license or requirement (including consent decrees, judicial decisions and administrative orders) together with all related amendments, implementing regulations and reauthorizations, pertaining to the protection, preservation, conservation or regulation of the environment, including: the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601 *et seq.* ("CERCLA"); the Resource Conservation and Recovery Act, 42 U.S.C. §6901 *et seq.* ("RCRA"); the Toxic Substances Control Act, 15 U.S.C. §2601 *et seq.* ("TOSCA"); the Clean Air Act, 42 U.S.C. §7401 *et seq.*; and the Clean Water Act, 33 U.S.C. §1251 *et seq.*;

(b) any state or local statute, law, code, rule, regulation, ordinance, order, standard, permit, license or requirement (including consent decrees, judicial decisions and administrative orders) together with all related amendments, implementing regulations and reauthorizations, pertaining to the protection, preservation, conservation or regulation of the environment, including, if the Premises are located in Illinois, the Illinois Environmental Protection Act, Part 415, Sections 5/1 *et seq.*, Illinois Compiled Statutes Annotated (1993) (collectively, the "Illinois Environmental Act");

(c) any federal, state or local legislation enacted in the future pertaining to the protection, preservation, conservation or regulation of the environment, and all related amendments, implementing regulations and reauthorizations.

3. "Hazardous Material" means:

(a) "hazardous substances" as defined by CERCLA or the Illinois Environmental Act,

(b) "hazardous wastes," as defined by RCRA;

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(e) any pollutant or contaminant, or hazardous, dangerous or toxic chemical, material, waste or substance ("pollutant") within the meaning of Environmental Laws, which Environmental Laws prohibit, limit or otherwise regulate the use, exposure, release, generation, manufacture, sale, transport, handling, storage, treatment, reuse, presence, disposal or recycling of such pollutant;

(d) more than 100 gallons of petroleum or crude oil;

(e) any radioactive material, including any source, special nuclear or by-product material as defined at 42 U.S.C. §2011 *et seq.*, and amendments thereto and reauthorizations thereof;

(f) asbestos-containing materials in any form or condition; and

(g) polychlorinated biphenyls ("PCB").

4. "Environmental Actions" means:

(a) any notice of violation, correspondence, complaint, claim, citation, demand, inquiry or inquiries, report, action, assertion of potential responsibility, lien, encumbrance, or proceeding regarding the Premises, whether formal or informal, absolute or contingent, matured or unmatured, brought or issued by any governmental unit, agency or body, or any person or entity respecting:

(i) Environmental Laws;

(ii) public health risks;

(iii) the environmental condition of the Premises, or any portion thereof, or any property near the Premises, including actual or alleged damage or injury to wildlife, biota, air, surface or subsurface soil or water, or other natural resources; or

(iv) the use, exposure, release, generation, manufacture, transportation to or from, handling, storage, treatment, recycling, reuse, disposal or presence of Hazardous Material either on the Premises or transported off-site for sale, treatment, storage, recycling, reclamation, reuse or disposal;

(b) any violation or claim of violation by Mortgagor of any Environmental Laws;

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(c) any lien for damages caused by, or the recovery of any costs incurred for the investigation, remediation or cleanup of any release or threatened release of Hazardous Material; or

(d) the destruction or loss of use of property, or the injury, illness or death of any employee, agent, representative, tenant or invitee of Mortgagor or any other person arising from or caused by the environmental condition of the Premises.

**B. Mortgagor's Representations.** Mortgagor hereby represents to Lender that:

1. Compliance. The Premises have been and are currently in compliance with all Environmental Laws. All required governmental permits and licenses are in effect, and Mortgagor is in compliance therewith. Mortgagor has not received any notice of any Environmental Action respecting either the Premises or any off-site facility to which has been sent any such Hazardous Material for off-site treatment, recycling, reclamation, reuse, handling, storage or disposal.

2. Absence of Hazardous Material. No use, exposure, release, generation, manufacture, storage, treatment, transportation or disposal of Hazardous Material has occurred or is occurring on or from the Premises except as has been disclosed in writing to Lender ("Permitted Material"). All Hazardous Material used, treated, stored, transported to or from, generated or handled on the Premises has been disposed of on or off the Premises in a lawful manner. No environmental, public health or safety hazards currently exist with respect to the Premises. No underground storage tanks (including petroleum storage tanks) are present on or under the Premises except as has been disclosed in writing to Lender ("Permitted Tanks").

3. Proceedings and Actions. There have been no past, and there are no pending or threatened, Environmental Actions to which Mortgagor is a party or which relate to the Premises.

**C. Mortgagor's Covenants.** Mortgagor hereby covenants and warrants to Lender as follows:

1. Compliance. The Premises shall comply with all Environmental Laws. All required governmental permits and licenses shall remain in effect or shall be renewed in a timely manner, and Mortgagor shall comply therewith. All Hazardous Material present, handled or generated on the Premises will be disposed of in a lawful manner. Mortgagor will satisfy all requirements of applicable Environmental Laws for the registration, operation, maintenance and removal of all underground storage tanks on the Premises, if any. Without limiting the foregoing, all Hazardous Material shall be handled in compliance with all applicable Environmental Laws.

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2. Absence of Hazardous Material. Other than Permitted Material, no Hazardous Material shall be introduced to or used, generated, present, or handled on the Premises without thirty (30) days prior written notice to Lender.

3. Environmental Actions. Mortgagor shall immediately notify Lender of all Environmental Actions and provide copies within two (2) business days of receipt of all written notices, complaints, correspondence and other documents relating thereto. Mortgagor shall promptly cure and have dismissed with prejudice all Environmental Actions to the satisfaction of Lender, and Mortgagor shall keep the Premises free of any encumbrance arising from any judgment, liability or lien imposed pursuant to any Environmental Actions.

4. Future Environmental Audits. Mortgagor shall provide such information and certifications which Lender may reasonably request from time to time to insure Mortgagor's compliance with this Paragraph 33. To investigate Mortgagor's compliance with Environmental Laws and with this Paragraph 33, Lender shall have the right, but no obligation, at any time to enter upon the Premises, take samples, review Mortgagor's books and records, interview Mortgagor's employees and officers, and conduct such other activities as Lender, at its sole discretion, deems appropriate to ensure Mortgagor's compliance. Mortgagor shall cooperate fully in the conduct of such an audit. If Lender decides to conduct such an audit because of (i) an Environmental Action; (ii) Lender's considering taking possession of or title to the Premises after default by Mortgagor; (iii) a material change in the use of Premises, which in Lender's opinion, increases the risk of non-compliance with Environmental Laws; or (iv) the introduction of Hazardous Material other than Permitted Material to the Premises; then Mortgagor shall pay upon demand all costs and expenses connected with such audit, which until paid, shall become additional indebtedness secured by the Loan Documents and shall bear interest at the default rate set forth in the Note. Nothing in this Paragraph 33 shall give or be construed as giving Lender the right to direct or control Mortgagor's actions in complying with Environmental Laws.

D. Lender's Right to Rely. Lender is entitled to rely upon Mortgagor's representations, warranties and covenants contained in this Paragraph 33 despite any independent investigations by Lender or its consultants. Mortgagor shall take all necessary actions to determine for itself and to remain aware of, the environmental condition of the Premises for itself. Mortgagor shall have no right to rely upon any independent environmental investigations or findings made by Lender or its consultants.

E. Indemnification. The term "Lender's Environmental Liability" shall mean any and all losses, liabilities, obligations, penalties, claims, fines, lost profits, litigation, demands, defenses, costs, judgments, suits, proceedings, damages (including consequential, punitive and exemplary damages), disbursements or expenses of any kind or nature whatsoever (including attorneys' fees at trial and appellate levels and experts' fees and disbursements and expenses incurred in investigating, defending against, settling or prosecuting any litigation, claim or

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## EXHIBIT A

### LEGAL DESCRIPTION OF REAL ESTATE

LOT 33 IN WILBERT L. SIEVERS SUBDIVISION OF WEST 15 ACRES OF SOUTH 60 ACRES OF SOUTHWEST 1/4 OF SECTION 36, (EXCEPT ALL THE PART OF SAID WEST 15 ACRES WHICH LIES WEST OF EAST LINE OF WEST 1/2 OF SOUTHWEST 1/4 OF SAID SECTION 36), TOWNSHIP 38 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

Permanent Index Number: 19-36-321-006-0000

Commonly known as 2935 West 86th Street, Chicago, Illinois 60652

Property of Cook County Clerk's Office

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## EXHIBIT B

### PERMITTED ENCUMBRANCES

1. Mortgage dated June 6, 1989 to Household Bank and recorded June 15, 1989 in the Office of the Cook County, Illinois Recorder of Deeds as Document No. 89271447
2. General taxes for the year 1993 2nd installment.

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9-12-2017

EXHIBIT C

IDENTIFIED LEASES

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proceeding) which may at any time be imposed upon, incurred by or asserted or awarded against Lender or any of Lender's parent and subsidiary corporations, and their affiliates, shareholders, directors, officers, employees, and agents (collectively, "Affiliates") in connection with or arising from:

1. any Hazardous Material on, in, under or affecting all or any portion of the Premises, or any surrounding areas;
2. any misrepresentation, inaccuracy or breach of any warranty, covenant or agreement contained or referred to in this Paragraph 33;
3. any violation or claim of violation by Mortgagor of any Environmental Laws;
4. the imposition of any lien for damages caused by, or the recovery of any costs incurred for the cleanup of, any release or threatened release of Hazardous Material; or
5. any Environmental Actions.

Mortgagor shall indemnify, defend (at trial and appellate levels and with counsel, experts and consultants acceptable to Lender and at Mortgagor's sole cost) and hold Lender and its Affiliates free and harmless from and against Lender's Environmental Liability (collectively, "Mortgagor's Indemnification Obligations"). Mortgagor's Indemnification Obligations shall survive in perpetuity the repayment of the Note or any transfer of the Premises by Mortgagor, Lender or its Affiliates, including by foreclosure or by a deed in lieu of foreclosure.

Mortgagor, its successors and assigns, hereby waive, release and agree not to make any claim or bring any cost recovery action against Lender under or with respect to any Environmental Laws. To the extent that Lender is strictly liable under any Environmental Laws or Environmental Actions, Mortgagor's obligation to Lender under this indemnity shall likewise be without regard to fault on the part of Mortgagor or Lender with respect to the violation or condition which results in liability to Lender.

IN WITNESS WHEREOF, Mortgagor has executed this Mortgage as of the date first above written.

**MORTGAGOR:**

  
\_\_\_\_\_  
FRED HUDSON

Mortgagor's Address:

1338-40 West 87th Street  
Chicago, Illinois 60620

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STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

I, Lurleen Hardin, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY that Fred Hudson, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged to me that he signed and delivered said instrument as his own free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 13<sup>th</sup> day of March, 1994.

Lurleen Hardin  
Notary Public

My Commission expires:

Feb 11, 1996



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