

UNOFFICIAL COPY

95486515

DEPT-01 RECORDING 455.00
T90012 TRAN 5444 07/26/95 09:43:00
61917 4 JIM 4-95-486515
COOK COUNTY RECORDER

THIS IS A SECOND MORTGAGE

MORTGAGE, ASSIGNMENT OF RENTS & SECURITY AGREEMENT (CHATTEL MORTGAGE)

THIS MORTGAGE ("Security Instrument") is given as of July 17, 1995, by AETNA BANK, not personally, but as Trustee ("Trustee") under Trust Agreement dated June 30, 1995 and known as Trust No. 10-4396; and 3425 N. Racine, L.L.C., ("Beneficiary" individually and collectively with Trustee, as the context requires, herein referred to as "Mortgagor"), whose address is c/o Kaiser Developers Inc., 819 S. Wabash Avenue, Suite 800, Chicago, Illinois 60605-2153. This Security Instrument is given to Mid Town Development Corporation, which is organized and existing under the laws of the State of Illinois ("Lender"), whose address is 2021 North Clark Street, Chicago, Illinois 60614. Mortgagor is justly indebted to Lender in the principal face amount of Four Hundred Thousand and 00/100 (\$400,000.00) Dollars, which indebtedness is evidenced by a certain note dated of even date herewith ("Note"), which Note provides for payments of the indebtedness as set forth below:

Interest

The Note provides for interest on the unpaid principal balance evidenced by the Note at the following rate: 18.5% per annum. A minimum amount of interest paid totaling \$74,000.00 shall be required prior to satisfaction in full of the indebtedness.

Interest shall be computed on the basis of a 365-day year and charged for the actual number of days elapsed.

Term

The Note shall be due and payable in full on the maturity date which shall be July 17, 1997 (the "Maturity Date").

Required Payments

Interest only on the outstanding principal balance from the date of this Note shall be due and payable monthly beginning August 17, 1995, and on that day of each month thereafter until all of said principal plus any remaining accrued interest and late charges, if any, are repaid in full.

75-54-473-DE (LW) (4)

52

95486515

UNOFFICIAL COPY

TOGETHER with all income from the Premises to be applied against the Indebtedness, provided, however, that Mortgagor may, so long as no Default has occurred hereunder, collect income and other benefits as it becomes due, but not more than one (1) month in advance thereof;

TOGETHER with all proceeds of the foregoing, including without limitation all judgments, awards of damages and settlements hereafter made resulting from condemnation proceeds or the taking of the Premises or any portion thereof under the power of eminent domain, any proceeds of any policies of insurance maintained with respect to the Premises, or proceeds of any sale, option or contract to sell the Premises or any portion thereof.

TO HAVE AND TO HOLD the Premises, unto the Lender, its successors and assigns, forever, for the purposes herein set forth together with all right to possession of the Premises after the occurrence of any Default as hereinafter defined; the Mortgagor hereby RELEASING AND WAIVING all rights under and by virtue of the homestead exemption laws of the State of Illinois.

MORTGAGOR COVENANTS that it is lawfully seized of the Land, and that it has lawful authority to mortgage the same, and that it will warrant and defend the Premises and the quiet and peaceful possession of the same against the lawful claims of all persons whomsoever.

PROVIDED, NEVERTHELESS, that if Mortgagor shall pay in full when due the Indebtedness and shall timely perform and observe all of the provisions herein, in the Note and other Loan Documents provided to be performed and observed by the Mortgagor, then this Security Instrument and the interest of Lender in the Premises shall cease and become void, but shall otherwise remain in full force.

IT IS FURTHER UNDERSTOOD AND AGREED THAT:

- A. Maintenance, Repair, Compliance with Law, etc. Mortgagor, it's successors or assigns shall:
1. promptly repair, restore or rebuild any buildings or improvement now or hereafter on the Premises which may become damaged or be destroyed;
 2. keep said Premises in good condition and repair, without waste, and free from mechanic's or other liens or claims for lien not expressly permitted by Lender;
 3. pay when due all operating costs of the Premises and any indebtedness which may be secured by a lien or charge on the Premises, and upon request exhibit satisfactory evidence of the discharge of any unpermitted lien to Lender;
 4. complete within a reasonable time any building or buildings now or at any time in process of erection upon said Premises, or within the time period set forth in any other Loan Document, whichever first occurs;
 5. comply with all requirements of law, including municipal ordinances, with respect to the Premises and the use thereof;
 6. refrain from any action and correct any condition which would increase the risk of fire or other hazard to the Improvements;
 7. comply with any restrictions of record with respect to the Premises; and comply with any conditions necessary to preserve and extend all rights that are applicable to the Premises; and
 8. cause the Premises to be managed in a competent manner.

Without the prior written consent of Lender, Mortgagor shall not cause, suffer, or permit any:

- a. material alterations of the Premises except as required by law or

UNOFFICIAL COPY

C. Insurance
1. Insurance Coverage. Mortgagor will insure the Premises against such perils and hazards, and in such amounts and with such limits, as Lender

thereon.
or that part thereof then unpaid, together with penalties and interest such Taxes, apply the money so deposited in full payment of such Taxes and upon Mortgagor's delivery to Lender of an official bill for upon Mortgagor's written request, after final disposition of such Taxes, restore such deposit to an amount satisfactory to Lender. Provided that Mortgagor is not then in default hereunder, Lender shall, in full, or, if Lender has applied funds on deposit on account of such Taxes, added to such funds then on deposit, is sufficient to make such payment forthwith, upon demand, either deposit with Lender a sum that, when deposited is insufficient for the payment in full of such Taxes, together with all penalties and interest thereon, Mortgagor shall Taxes, or any portion thereof then unpaid, including all penalties and interest thereon. If the amount of the money and any such security so security deposited with Lender, in payment of, or on account of, such provided, Lender may, at its option, apply the monies and liquidate any or fails to maintain sufficient funds on deposit as hereinabove If Mortgagor fails to prosecute such contest with reasonable diligence Mortgagor fails to prosecute such contest with reasonable diligence whenever Lender deems such an increase advisable.

increase such deposit to cover additional interest and penalties contested Taxes, including interest and penalties, and shall hereof, is sufficient, in Lender's judgment, to pay in full such other security, if any, deposited with Lender pursuant to Section from time to time in writing designate, a sum of money or other security acceptable to Lender that, when added to the monies or by any interest, penalties, or costs, and

c. Mortgagor has deposited with Lender, at such place as Lender may Mortgagor to contest the same before any Taxes have been increased b. Mortgagor has notified Lender in writing of the intention of interest therein to satisfy the same;

a. Such contest shall prevent the collection of the Taxes so contested and the sale or forfeiture of the Premises or any part thereof or interest therein to satisfy the same;
2. Mortgagor may, in good faith and with reasonable diligence, contest the validity or amount of any such Taxes, provided:
1. Mortgagor shall pay when due, and before any penalty attaches, all general taxes, special taxes, special assessments, water charges, sewer service charges, and other charges against the Premises, any interest therein or any obligation or instrument secured hereby (collectively "Taxes") when due, and shall, upon written request, furnish to Lender, its successors or assigns duplicate receipts therefor, and shall discharge any claim or lien relating to Taxes upon the Premises.

except as permitted by Lender or permitted or required to be made by the terms of any leases approved by Lender;
b. change in the intended use of the Premises;
c. change in the identity of the person or firm responsible for managing the Premises;
d. zoning reclassification with respect to the Premises;
e. unlawful use of, or nuisance to exist upon, the Premises; or
f. granting of any easements, licenses, covenants, conditions or declarations of use against the Premises, other than use restrictions contained or provided for in leases approved by Lender.

9556556

UNOFFICIAL COPY

may from time to time require, and in any event will continuously maintain the following described policies of insurance (the "Insurance Policies"):

- a. Casualty insurance against loss and damage by all risks of physical loss or damage, including fire, windstorm, flood, earthquake and other risks covered by the so-called extended coverage endorsement in amounts not less than the full insurable replacement value of all Improvements, fixtures and equipment from time to time on the Premises and bearing a replacement cost agreed amount endorsement;
 - b. Comprehensive public liability against death, bodily injury and property damage with such limits as Lender may require;
 - c. Rental or business interruption insurance in amounts sufficient to pay, for a period of up to one (1) year, all amounts required to be paid pursuant to the Note and this Security Instrument, if applicable;
 - d. Steam boiler, machinery and pressurized vessel insurance, if applicable;
 - e. If the Federal Insurance Administration (FIA) has designated the Premises to be in a special flood hazard area and designated the community in which the Premises are located eligible for sale of subsidized insurance, first and second layer flood insurance when and as available; and
 - f. The types and amounts of coverage as are customarily maintained by owners or operators of like properties.
2. Insurance Policies. All Insurance Policies shall be in form, companies and amounts reasonably satisfactory to Lender. All Insurance Policies shall:
- a. include, when available, non-contributing mortgagee endorsements in favor of and with loss payable to Lender,
 - b. include standard waiver of subrogation endorsements,
 - c. provide that the coverage shall not be terminated or materially modified without thirty (30) days advance written notice to Lender, and
 - d. provide that no claims shall be paid thereunder without ten (10) days advance written notice to Lender.

Mortgagor will deliver all Insurance Policies, premium prepaid, to Lender and will deliver renewal or replacement policies at least thirty (30) days prior to the date of expiration of any policy.

D. Casualty and Condemnation

1. Proceeds of Insurance. Mortgagor will give Lender prompt notice of any loss or damage to the Premises, and:
 - a. In case of loss or damage covered by any of the Insurance Policies, Lender (or, after entry of decree of foreclosure, the purchaser at the foreclosure sale or decree creditor, as the case may be) may at its option either (i) settle and adjust any claim under such Insurance Policies without the consent of Mortgagor, or (ii) allow Mortgagor to settle and adjust such claim without the consent of Lender; provided that in either case Lender shall, and is hereby authorized to, collect and receipt for any such insurance proceeds; and the expenses incurred by Lender in the adjustment and collection of insurance proceeds shall be so much additional Indebtedness, and shall be reimbursed to Lender upon demand or may be deducted by Lender from said insurance proceeds prior to any other application thereof. Each insurance company which has issued an Insurance Policy is hereby authorized and directed to make payment for all losses covered by any Insurance Policy to Lender

95496515

UNOFFICIAL COPY

alone, and not to Lender and Mortgagor jointly. Lender shall, in its sole discretion, elect to apply the proceeds of insurance policies consequent upon any casualty either (i) to reduce the indebtedness; or (ii) to reimburse Mortgagor for the cost of restoring or repairing the Premises subject to the conditions and in accordance with the provisions hereof. In the event Lender applies the proceeds of insurance policies to the indebtedness and such proceeds do not discharge that indebtedness in full, the entire indebtedness shall become immediately due and payable with interest thereon at the Default Rate.

c. Whether or not insurance proceeds are made available to Mortgagor, Mortgagor shall restore or repair the Improvements to be of at least equal value, and of substantially the same character as prior to such casualty, all to be effected in accordance with plans, specifications and procedures approved in advance by Lender, and Mortgagor shall pay all costs of such restoring or repairing.

2. Disbursement of Insurance Proceeds. Insurance proceeds held by Lender for restoration or repairing of the Premises shall be disbursed from time to time upon Lender being furnished with (i) evidence satisfactory to it of the estimated cost of the restoration or repair, (ii) funds sufficient in addition to the proceeds of insurance, to fully pay for the restoration or repair, and (iii) such architect's certificates, waivers of lien, contractor's sworn statements, title insurance endorsements, plats of survey and such other evidences of cost, payment and performance as Lender may require and approve. No payment made prior to the final completion of the restoration or repair shall exceed fifty percent (50%) of the value of the work performed from time to time, as such value shall be determined by Lender in its sole judgment; funds other than insurance proceeds shall be disbursed prior to disbursement of such proceeds, except as may otherwise be provided in the Loan Documents; and at all times the undisbursed balance of such proceeds remaining in the hands of Lender, together with funds deposited or irrevocably committed, to the satisfaction of Lender, by or on behalf of Mortgagor to pay the cost of such repair or restoration, shall be sufficient in the reasonable judgment of Lender to pay the entire unpaid cost of the restoration or repair, free of all liens or claims for lien. Any surplus remaining out of insurance proceeds held by Lender after payment of such costs of restoration or repair shall be paid to Mortgagor, provided Mortgagor is not in default hereunder. No interest shall be allowed to Mortgagor on account of any proceeds of insurance or other funds held by Lender.

3. Condemnation and Eminent Domain. All awards (the "Awards") made to the present, or any subsequent, owner of the Premises, by any governmental or other lawful authority for the taking, by condemnation or eminent domain, of all or any part of the Premises, are hereby assigned by Mortgagor to Lender. Lender may collect the Awards from the condemnation authorities, and may give appropriate acquittances therefor. Mortgagor shall immediately notify Lender of the actual or threatened commencement of any condemnation or eminent domain proceedings affecting any part of the Premises and shall deliver to Lender copies of all papers served in connection with any such proceedings. Mortgagor shall make, execute, and deliver to Lender, at any time upon request, free of any encumbrance, any further assignments and other instruments deemed necessary by Lender for the purpose of assigning the Awards to Lender. If any portion of or interest in the Premises is taken by condemnation or eminent domain, and the remaining portion of the Premises is not, in the judgment of Lender, a complete economic unit having equivalent value to the Premises as it existed

1598956

UNOFFICIAL COPY

prior to the taking, then, at the option of Lender, the entire Indebtedness shall immediately become due. After deducting from the Award for such taking all of its expenses incurred in the collection and administration of the Award, including attorneys' fees, Lender shall be entitled to apply the net proceeds toward repayment of such portion of the Indebtedness as it deems appropriate without affecting the lien of this Security Instrument. In the event of any partial taking of the Premises or any interest in the Premises, which, in the judgment of Lender, leaves the Premises as a complete economic unit having equivalent value to the Premises as it existed prior to the taking, and provided Mortgagor is not in default hereunder, the Award shall be applied to reimburse Mortgagor for the cost of restoration and rebuilding the Premises in accordance with plans, specifications and procedures approved in advance by Lender, and such Award shall be disbursed in the same manner as is provided herein for the application of insurance proceeds, provided that any surplus after payment of such costs shall be applied on account of the Indebtedness. If the Award is not applied for reimbursement of such restoration costs, the Award shall be applied against the Indebtedness, in such order or manner as Lender shall elect.

- E. Defaults and Acceleration Mortgagor shall pay each item of Indebtedness herein mentioned, both principal and interest, when due according to the terms hereof. At the option of Lender and without notice to Mortgagor, all unpaid Indebtedness secured by this Security Instrument shall, notwithstanding anything in the Note or in this Security Instrument to the contrary, become immediately due and payable if one or more of the following events (which, together with any other event which is designated in this Security Instrument as a Default, are herein called "Defaults") shall occur:
1. If Mortgagor shall, after the expiration of any applicable grace periods, fail to make payments of amounts owed under the Note, this Security Instrument or any other Loan Document when due;
 2. A Prohibited Transfer;
 3. If any representation or warranty contained herein is untrue, or if default shall continue for fifteen (15) days after notice thereof by Lender to Mortgagor in the punctual performance or observance of any other agreement or condition herein contained;
 4. If any default shall, after the expiration of any applicable grace periods, exist under any other document or instrument regulating, evidencing, securing or guarantying any of the Indebtedness, including without limitation any loan commitment of Mortgagor and any revisions, modifications, or extensions thereof;
 5. If (and for the purpose of this paragraph 5 only, the term Mortgagor shall mean not only any person or entity constituting a Mortgagor, but also (i) any beneficiary of a trustee Mortgagor, (ii) any general partner in a partnership Mortgagor or in a partnership which is a beneficiary of a trustee Mortgagor, (iii) any manager of a limited liability company Mortgagor or of a limited liability company which is a beneficiary of a trustee Mortgagor; (iv) any owner of more than ten percent (10%) of the stock in a corporate Mortgagor or a corporation which is a beneficiary of a trustee Mortgagor, and (v) each person who, as guarantor, co-maker or otherwise, shall be or become liable for any part of the Indebtedness or any of the agreements contained herein):
 - a. Mortgagor shall file a voluntary petition in bankruptcy or for relief under the Federal Bankruptcy Act or any similar state or federal law;
 - b. Mortgagor shall file a pleading in any proceeding admitting

95486515

UNOFFICIAL COPY

8

1. When indebtedness hereby secured shall become due whether by acceleration or otherwise, Lender shall have the right to foreclose the lien hereon in accordance with the Illinois Mortgage Foreclosure Act, 735 ILCS 5/15-1101, et seq. (the "Act") and to exercise any other remedies of Lender provided in the Note, this Security Instrument, the Loan Documents, or which Lender may have at law, at equity or otherwise. Lender shall have the benefit of all of the provisions of the Act, including all amendments thereto which may become effective from time to time after the date hereof. In the event any provision of the Act which is specifically referred to herein may be repealed, Lender shall have the benefit of such provision as most recently existing prior to such repeal, as though the same were incorporated herein by express reference. In any suit to foreclose the lien hereof, there shall be allowed and included a additional indebtedness in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of Lender for attorneys' fees, appraiser's fees, outlays for documentary and expert evidence, stenographer's charges, publication costs and costs (which may be estimated as to items to be expended after entry of the decree) or procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to title as Lender may deem to be reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the premises, and any other expenses and expenditures which may be paid or incurred by or on behalf of Lender and permitted by the Act to be included in such decree. All expenditures and expenses of the nature mentioned in this paragraph, and such other expenses and fees as may be incurred in the protection of, or in connection with, the premises, rents or income therefrom, this Security Instrument, the Note, the Loan Documents, or the maintenance of the lien of this Security Instrument, including the fees of any attorney employed by Lender in any litigation or proceedings, including probate and bankruptcy proceedings, or in preparation of the commencement or defense of any proceedings or threatened suit or proceeding, whether or not actually commenced, or otherwise in dealing specifically therewith, shall be so much additional indebtedness secured hereby and shall be immediately due and payable by Mortgagor, with interest thereon at the Default Rate until

F. Foreclosure and Right of Possession

7. Lender shall, in good faith, deem itself insecure.
6. The death of any individual Mortgagor or any guarantor of any of the Indebtedness; or
5. Any order appointing a receiver, trustee or liquidator of Mortgagor or all or a major part of Mortgagor's property or the premises is not vacated within ninety (90) days following the entry thereof;
4. Any order appointing a receiver, trustee or liquidator of Mortgagor or all or the major part of its property, or the premises; or
3. Mortgagor shall make an assignment for the benefit of creditors or shall consent to the appointment of a receiver or trustee or liquidator of all or the major part of its property, or the premises; or
2. A substantial part of Mortgagor's assets are attached, seized, subjected to a writ or distress warrant, or are levied upon, unless such attachment, seizure, writ, warrant or levy is vacated within sixty (60) days;
1. Within sixty (60) days after the filing against Mortgagor of any involuntary proceeding under the Federal Bankruptcy Act or similar state or federal law, such proceedings shall not have been vacated;

95486515

UNOFFICIAL COPY

- paid.
2. Except to the extent otherwise required by the Act, the proceeds of any foreclosure sale of the Premises shall be distributed and applied in the following order of priority: First, on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in the preceding paragraph thereof; second, all other items which under the terms hereof constitute Indebtedness additional to the principal and interest evidenced by the Note in such order as Lender shall elect with interest thereon as herein provided; third, all interest remaining unpaid on the Note; fourth, all principal remaining unpaid on the Note; fifth, any surplus to Mortgagor, its successors or assigns, as their rights may appear.
 3. In case of an insured loss after foreclosure proceedings have been instituted, the proceeds of any Insurance Policy, if not applied in rebuilding or restoring the Improvements, shall be used to pay the amount due in accordance with any decree of foreclosure that may be entered in any such proceedings, and the balance shall be paid as the court may direct. The foreclosure decree may provide that the mortgagee's clause attached to each of the casualty Insurance Policies may be cancelled and that the decree creditor may cause a new loss clause to be attached to each of said casualty Insurance Policies making the loss thereunder payable to said decree creditors. The foreclosure decree may further provide that in the case of one or more redemptions under said decree, each successive redeemer may cause the preceding loss clause attached to each casualty Insurance Policy to be cancelled and a new loss payable clause to be attached thereto, making the loss thereunder payable to such redeemer. In the event of foreclosure sale, Lender may, without the consent of Mortgagor, assign any Insurance Policies to the purchaser at the sale, or take such other steps to protect the interest of such purchaser.
 4. When the Indebtedness shall become due, whether by acceleration or otherwise, or if Lender has a right to institute foreclosure proceedings, Mortgagor shall, forthwith upon demand of Lender, surrender to Lender, and Lender shall be entitled to be placed in possession of the Premises as provided in the Act and Lender, in its discretion and pursuant to court order, may reasonably, by its agent or attorneys, enter upon and take and maintain possession of all or any part of the Premises, together with all documents, books, records and accounts of Mortgagor or the then owner of the Premises relating thereto, and may exclude Mortgagor, such owner, and any agents and servants thereof wholly therefrom and may, on behalf of Mortgagor or such owner, or in its own name as Lender and under the powers herein granted:
 - a. Hold, manage, and control all or any part of the Premises and conduct the business, if any, thereof, either personally or by its agents, with full power to use such measures, legal or equitable, as in its discretion may be deemed proper or necessary to enforce the payment or security of the rents, issues, deposits, profits, and avails of the Premises;
 - b. Cancel or terminate any lease or sublease of all or any part of the Premises for any cause or on any ground that would entitle Mortgagor to cancel the same;
 - c. Extend or modify any then existing leases and make new leases of all or any part of the Premises, which extensions, modifications, and new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the loan evidenced by the Note and the issuance of a deed to a purchaser at a foreclosure sale, it being understood and

95496515

UNOFFICIAL COPY

Appointing of Receiver. Upon, or at any time after the filing of a foreclosure of this Security Instrument, the court in which such foreclosure is filed may appoint upon petition of Lender, and at Lender's sole option, a receiver of said premises. Such appointment may be made either before or after sale, without notice without regard to the solvency or insolvency of Mortgagor at the time of application for such receiver and without regard to the then value of the premises or whether the same shall be then occupied as a homestead or not and Lender hereunder or any employee or agent thereof may be appointed as such receiver. Such receiver shall have all powers and duties prescribed by the Act, including the power to make leases to be binding upon all parties, including the Mortgagor, the purchaser at a sale pursuant to a judgment of foreclosure and any person acquiring an interest in the premises after entry of a judgment of foreclosure, all as provided in the Act. In addition, such receiver shall also have the power to extend or modify any then existing leases, which extensions and modifications may provide for terms to expire, or for options to leases to extend or renew terms to expire, beyond the maturity date of the Note and beyond the date the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other provisions to be contained therein, shall be binding upon Mortgagor and all the persons whose interest in the premises are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption, reinstatement, discharge of the indebtedness, satisfaction of any foreclosure judgment, or issuance of any certificate of sale or deed to any purchaser. In addition, such receiver shall have power to collect the rents, issues and profits of said premises during the pendency of such foreclosure suit and, in case of a sale and a deficiency, during the full statutory period of redemption, whether there be redemption or not, as well as during any further times when Mortgagor, except for the intervention of such receiver, would be entitled to collect such rents, issues and profits, and such receiver shall also have all other powers which may be necessary or are usual in such cases.

Without limiting the generality of the foregoing, Lender shall have all power, authority and duties as provided in the Act. Nothing herein contained shall be construed as constituting Lender a mortgagee in possession in the absence of the actual taking of possession of the premises.

d. Make all necessary or proper repairs, decoration renewals, replacements, alterations, additions, betterments, and improvements in connection with the premises as may seem judicious to Lender, to insure and reinsure the premises and all risks incidental to Lender's possession, operation, and management thereof, and to receive all rents, issues, deposits, profits, and avails therefrom; and

e. Apply the net income, after allowing a reasonable fee for the collection thereof and for the management of the premises, to the payment of Taxes, premiums and other charges applicable to the premises, or in reduction of the indebtedness hereby secured in such order and manner as Lender shall select.

ST 596556

for the protection, possession, control, management, and operation of the Premises during the whole of said period. The court from time to time may authorize the receiver to apply the net income in his hands in payment in whole or in part of: (a) the Indebtedness or the indebtedness secured by any decree foreclosing this Security Instrument, or any tax, assessment or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to the foreclosure sale; or (b) the deficiency in case of a sale and deficiency.

95486515

H. Payments and Advances by Lender After Default. In case of Default, either before or after acceleration of the Indebtedness or the foreclosure of the lien hereof and during the period of redemption, if any, Lender may, but shall not be required to, make any payment or perform any act herein required of Mortgagor (whether or not Mortgagor is personally liable therefor) in any form and manner deemed expedient to Lender. Lender may, but shall not be required to, complete construction, furnishing and equipping of the Improvements and rent, operate and manage the Premises and the Improvements and pay operating costs and expenses, including management fees, of every kind and nature in connection therewith, so that the Premises shall be operational and useable for their intended purposes. All monies paid, and all expenses incurred in connection therewith, including attorneys' fees, shall be so much additional Indebtedness, whether or not the Indebtedness, as a result thereof, shall exceed the face amount of the Note, and shall become immediately due and payable on demand, and with interest thereon at the default rate specified in the Note, or if no such rate is specified, at the prematurity rate set forth in the Note (the "Default Rate"). Inaction of Lender shall not be a waiver of any right accruing to it on account of any Default nor shall the provisions of this paragraph or any exercise by Lender of its rights hereunder prevent any default from constituting a Default. Lender, in making any payment hereby authorized (a) relating to Taxes, may do so according to any bill, statement or estimate, without inquiry into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof; (b) for the purchase, discharge, compromise or settlement of any lien, may do so without inquiry as to the validity or amount of any claim for lien which may be asserted; or (c) in connection with the completion of construction, furnishing or equipping of the Premises or the rental, operation or management of the Premises or the payment of operating costs and expenses thereof, may do so in such amounts and to such persons as Lender may deem appropriate. Nothing contained herein shall be construed to require Lender to advance or expend monies for any purpose.

I. Lender's Right of Inspection. Mortgagor shall keep and maintain full and correct books and records showing in detail the income and expenses of the Premises. Lender and its agents shall have the right to inspect the Premises and all books, records and documents relating thereto at all reasonable times.

J. Deposits of Taxes and Insurance Premiums. To the full extent permitted by law, to further secure the Indebtedness, Mortgagor agrees to deposit with Lender on the first day of each and every month, occurring after the date hereof, until the Indebtedness shall have been fully paid, an amount equal to one-twelfth of 110% of the annual real estate taxes, assessments (general and special) and insurance premiums as determined by Lender (the amount deposited referred to as "Funds"). Said Funds are hereby pledged as additional security for the Indebtedness and shall be held by Lender in accordance with the terms and provisions of this Section without any

UNOFFICIAL COPY

- allowance of interest, and may be applied by Lender toward payment of taxes, assessments and insurance premiums when due, but Lender shall be under no obligation to ascertain the correctness of or to obtain the tax, assessment or insurance bills, or attend to the payment thereof. If the funds so deposited exceed the amount required to pay such taxes, assessments and insurance premiums for any year, the excess shall be applied on a subsequent deposit or deposits. Mortgagor acknowledges that the sums so deposited shall create a debtor-creditor relationship only and shall not be considered to be held by Lender in trust and that Lender shall not be considered to have consented to act as the Mortgagor's agent for the payment of such taxes, assessments and premiums. In the event of default, Lender may at its option, without being required to do so, apply any funds held to payment of the indebtedness in such order and manner as Lender may elect. When the indebtedness secured hereby has been fully paid, any remaining funds shall be paid to Mortgagor, or its successors or assigns, as their rights may appear.
- k. Restrictions on Transfers.
1. In determining whether or not to make the loan secured hereby, Lender examined the credit-worthiness of each person or entity constituting a Mortgagor and the guarantors (if applicable), found the same to be acceptable and relied and continues to rely upon same as the means of repayment of the loan. Lender also evaluated the background and experience of each person or entity constituting a Mortgagor and the guarantors (if applicable) in owning and operating property such as the premises, found the same to be acceptable and relied and continues to rely upon same as the means of maintaining the value of the premises which is Lender's security for the loan. It is recognized that Lender is entitled to keep its own portfolio at current interest rates by either making new loans at such rates or collecting assumption fees and/or increasing the interest rate on a loan the security for which is purchased by a party other than the original Mortgagor. Mortgagor further recognizes that any secondary or junior financing placed upon the premises, or the beneficial interest of a trustee in Mortgagor (if applicable):
- a. may divert funds which would otherwise be used to pay the Note secured hereby;
- b. could result in acceleration and foreclosure by any such junior encumbrancer which would force Lender to take measures and incur expenses to protect its security;
- c. would detract from the value of the premises should Lender come into possession thereof with the intention of selling same; and
- d. would impair Lender's right to accept a deed in lieu of foreclosure, as a foreclosure by Lender would be necessary to clear the title of the premises.
2. In accordance with the foregoing and for the purposes of:
- a. protecting Lender's security, both of repayment of the indebtedness and of value of the premises;
- b. giving Lender the full benefit of its bargain and contract with Mortgagor;
- c. allowing Lender to raise the interest rate and/or collect assumption fees; and
- d. keeping the premises and the beneficial interest (if applicable) free of subordinate financing liens,
- Mortgagor agrees that if this Section K be deemed a restraint on alienation, that it is a reasonable one.
3. Mortgagor shall not, without the prior written consent of Lender (which may be granted or withheld in its sole and absolute discretion),

UNOFFICIAL COPY

effect, suffer or permit any "Prohibited Transfer" (as defined herein). Any conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest grant or other encumbrance or alienation (or any agreement to do any of the foregoing) of any of the following properties or interests shall constitute a "Prohibited Transfer":

- a. The Premises or any part thereof or interest therein;
- b. All or any portion of the beneficial interest or power of direction in or to the trust under which Mortgagor is acting, if Mortgagor is a trustee;
- c. Any shares of capital stock of a corporate Mortgagor, a corporation which is a beneficiary of a trustee Mortgagor, a corporation which is a general partner in a partnership Mortgagor, a corporation that is a manager of a limited liability company Mortgagor, a corporation which is a general partner in a partnership beneficiary of a trustee Mortgagor, a corporation that is a manager of a limited liability company beneficiary of a trustee Mortgagor, or a corporation which controls or is the direct or indirect owner of all or substantially all of the capital stock of any corporation described in this subparagraph (other than the shares of capital stock of a corporation whose stock is publicly traded on a national securities exchange or on the National Association of Securities Dealer's Automated Quotation System);
- d. All or any part of the partnership or joint venture interest, as the case may be, of a partnership or joint venture Mortgagor, or a partnership or joint venture beneficiary of a trustee Mortgagor; or
- e. All or any part of the interests in a limited liability company Mortgagor, or a limited liability company beneficiary of a trustee Mortgagor,

in each case whether any such conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest grant, encumbrance or alienation is effected directly, indirectly, voluntarily or involuntarily, by operation of law or otherwise; provided, however, that the foregoing provisions of this Section shall not apply (i) to liens securing the Indebtedness, or (ii) to the lien of current taxes and assessments not in default.

4. Any consent by the Lender, or any waiver of Default, under this Section shall not constitute a consent to, or waiver of any right, remedy or power of Lender upon a subsequent Default under this Section.

L. Assignment of Leases and Rents.

1. To further secure the Indebtedness, Mortgagor does hereby sell, assign and transfer unto the Lender all leases, together with the rents, issues and profits now due and which may hereafter become due under or by virtue of any lease, whether written or verbal, or any letting of, or of any agreement for the use or occupancy of the Premises or any part hereof, which may have been heretofore or may be hereafter made or agreed to or which may be made or agreed to by the Lender under the powers herein granted, it being the intention hereby to establish an absolute transfer and assignment of all of such leases and agreements, and all the avails thereunder, unto the Lender, and Mortgagor does hereby appoint irrevocably the Lender its true and lawful attorney in its name and stead (with or without taking possession of the Premises) to rent, lease or let all or any portion of the Premises to any part or parties at such rental and upon such terms as said Lender shall, in its discretion, determine, and to collect all of said avails, rents, issues and profits arising from or accruing at any time hereafter, existing on the Premises, with the same rights and powers and subject to the same immunities, exoneration of liability and rights of recourse

UNOFFICIAL COPY

M. Application of Rents. The Lender, in the exercise of the rights and powers conferred upon it by Section 1 hereof, shall have full power to use

and indemnify as the Lender would have upon taking possession of the Premises. The Mortgagor represents and agrees that no rent has been or will be paid by any person in possession of any portion of the Premises for more than one installment in advance, and that the payment of none of the rents to accrue for any portion of the Premises has been or will be waived, released, reduced, discounted, or otherwise discharged or compromised by the Mortgagor. The Mortgagor waives any rights of set off against any person in possession of any portion of the Premises. Mortgagor agrees that it will not assign any of the rents or profits of the Premises, except to a purchaser or grantee of the Premises. Nothing herein contained shall be construed as constituting the Lender as a mortgagee in possession by the Lender. In the exercise of the powers herein granted the Lender, no liability shall be asserted or enforced against the Lender, all such liability being expressly waived and released by Mortgagor.

4. The Mortgagor further agrees to assign and transfer to the Lender all future leases regarding all or any part of the Premises heretofore described and to execute and deliver, at the request of the Lender, all such further assurances and assignments in the Premises as the Lender shall from time to time require. Within thirty (30) days of Lender's written demand, Mortgagor will furnish Lender with executed copies of each of the leases and with estoppel letters from each tenant in a form satisfactory to Lender. If Lender requires that Mortgagor execute and record a separate collateral assignment of rents or separate assignments of any of the leases to Lender, the terms of those assignments shall control in the event of a conflict with the terms of this Security Instrument.
5. Although it is the intention of the parties that the assignment contained in this Section shall be a present assignment, Lender shall not exercise any of the rights or powers conferred upon it by this Section until the occurrence of a default hereunder.
6. The Lender shall not be obliged to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any leases, and the Mortgagor shall and does hereby agree to indemnify, defend with counsel reasonably acceptable to Lender (at Mortgagor's sole cost), and hold harmless Lender, its affiliates, its and its affiliates officers, directors, shareholders, partners, members, managers, employees and agents, and the heirs, legal representatives, successors and assigns of all of the foregoing (collectively and individually, as the context requires, "Indemnified Parties") of and from any claim, responses, or other costs, loss, damages, liability or demand (including without limitation reasonable attorney's fees and costs incurred by Lender) which it may or might incur under said leases or under or by reason of the assignment thereof, and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in said leases. Should the Lender incur any such liability, loss or damage under said leases or under or by reason of the assignment thereof, or in the defense of any claims or demands, the amount thereof, including costs, expenses and reasonable attorney's fees, shall be secured hereby, and the Mortgagor shall reimburse the Lender therefor immediately upon demand.

UNOFFICIAL COPY

and apply the avails, rents, issues and profits of the Premises to the payment of or on account of the Indebtedness in such order as the Lender may determine.

N. Environmental Matters. Mortgagor represents that it is currently in compliance with, and covenants and agrees that it will manage and operate the Premises, and will cause each tenant to occupy its demised portion of the Premises, in compliance with all federal, state and local laws, rules, regulations and ordinances regulating, without limitation, air pollution, soil and water pollution, and the use, generation, storage, handling or disposal of hazardous or toxic substances or other materials (including, without limitation, raw materials, products, supplies or wastes). Mortgagor further covenants and agrees that it shall not install or permit to be installed in the Premises asbestos, or any substance containing asbestos or deemed hazardous by or in violation of federal, state or local laws, rules, regulations or orders respecting such material. Mortgagor shall send to Lender within five (5) days of receipt or completion thereof, any report, citation, notice or other writing including, without limitation, hazardous waste disposal manifests, by, to or from any governmental or quasi-governmental authority empowered to regulate or oversee any of the foregoing activities. Mortgagor shall remove from the Premises and dispose of any such hazardous or toxic substances or other materials in a manner consistent with and in compliance with applicable laws, rules, regulations and ordinances and shall take any and all other action to remedy, rectify, rehabilitate and correct any violation of any applicable law, rule, regulation or ordinance concerning toxic or hazardous substances or any violation of any agreement entered into between Mortgagor, Lender or any third party with respect to hazardous or toxic materials. Mortgagor agrees to indemnify, defend with counsel reasonably acceptable to Lender (at Mortgagor's sole cost) and hold harmless Lender and the other Indemnified Parties against any claim, response or other costs, loss, damages, liability or demand (including without limitation reasonable attorney's fees and costs incurred by Lender) arising out of the existence or release of toxic or hazardous substances, any claimed violation by Mortgagor of any of the foregoing laws, regulations or ordinances, or breach of any of the foregoing covenants or agreements. The foregoing indemnity, and any other indemnity contained in this Security Instrument or the Loan Documents, shall survive repayment of the Indebtedness.

O. Waiver of Right of Redemption and Other Rights. To the full extent permitted by law, Mortgagor agrees that it will not at any time or in any manner whatsoever take any advantage of any stay, exemption or extension law or any so-called "Moratorium Law" now or at any time hereafter in force, nor take any advantage of any law now or hereafter in force providing for the valuation or appraisal of the Premises, or any part thereof, prior to any sale thereof to be made pursuant to any provisions herein contained, or to any decree, judgment or order of any court of competent jurisdiction; or after such sale claim or exercise any rights under any statute now or hereafter in force to redeem the property so sold, or any part thereof, or relating to the marshalling thereof, upon foreclosure sale or other enforcement hereof. To the full extent permitted by law, Mortgagor hereby expressly waives any and all rights it may have to require that the Premises be sold as separate tracts or units in the event of foreclosure. To the full extent permitted by law, Mortgagor hereby expressly waives any and all rights of redemption under the Act, on its own behalf, on behalf of all persons claiming or having an interest (direct or indirect) by, through or under Mortgagor and on

95486515

UNOFFICIAL COPY

behalf of each and every person acquiring any interest in or title to the premises subsequent to the date hereof, it being the intent hereof that any and all such rights of redemption of Mortgagee and such other persons, are and shall be deemed to be hereby waived to the full extent permitted by applicable law. To the full extent permitted by law, Mortgagee agrees that it will not, by invoking or utilizing any applicable law or laws or otherwise, hinder, delay or impede the exercise of any right, power or remedy herein or otherwise granted or delegated to Lender, but will permit the exercise of every such right, power and remedy as though no such law or laws have been or will have been made or enacted. To the full extent permitted by law, Mortgagee hereby agrees that no action for the enforcement of the lien or any provision hereof shall be subject to any defense which would not be good and valid in an action at law upon the Note. Mortgagee acknowledges that the Premises do not constitute agricultural real estate as defined in 5/15-1201 of the Act or residential real estate as defined in 5/15-1219 of the Act.

p. Miscellaneous. This Security Instrument shall be construed under Illinois law, without regard to the conflicts of law principles of that state. If any provisions hereof are invalid under Illinois law, such invalidity shall not affect the validity of the rest of the Security Instrument.

1. At all times, regardless of whether any loan proceeds have been disbursed, this Security Instrument secures as part of the indebtedness hereby secured the payment of any and all loan commissions, service charges, liquidated damages, attorney's fees, expenses and advances due to or incurred by Lender in accordance with the Note, this Security Instrument and any Loan Document, including without limitation, any loan commitment. All such advances are intended by the parties hereto to be a lien on the Premises from the time this Security Instrument is recorded.

2. Lender shall prepare the release of this Security Instrument and the lien thereof by proper instrument upon presentation of satisfactory evidence that all indebtedness secured by this Security Instrument has been fully paid, including the cost of the preparation of the release. Mortgagee shall be responsible for the recording of said release and all charges relating thereto.

3. This Security Instrument and each provision hereof shall be binding upon Mortgagee and its successors and assigns (including, without limitation, each and every record owner from time to time of the premises or any other person having an interest therein), and shall inure to the benefit of Lender and its successors and assigns. Wherever herein Lender is referred to, such reference shall be deemed to include the holder from time to time of the Note; and each such holder of the Note shall have all of the rights afforded hereby and may enforce the provisions hereof, as fully as if Lender had designated such holder of the Note herein by name. All of the covenants of this Security Instrument shall run with the land and be binding on any successor owners of the land. If the ownership of the Premises or any portion thereof becomes vested in a person other than Mortgagee, Lender may, without notice to Mortgagee, deal with such person with reference to this Security Instrument and the indebtedness in the same manner as with Mortgagee without in any way releasing Mortgagee from its obligations hereunder. Mortgagee will give immediate written notice to Lender of any conveyance, transfer or change of ownership of the Premises, but nothing in this paragraph shall vary the provisions of Section 8 hereof. The word "Note" when used in this instrument shall be construed to mean "Notes" when more than one note is secured hereby.

4. Mortgagee and Lender acknowledge and agree that in no event shall

UNOFFICIAL COPY

Lender be deemed to be a partner, or joint venturer with Mortgagor or any beneficiary of a trustee Mortgagor. Without limitation of the foregoing, Lender shall not be deemed to be such a partner or joint venturer on account of its becoming a mortgagee in possession or exercising any rights pursuant to this Security Instrument or pursuant to any Loan Document or otherwise.

5. Each right herein conferred upon Lender is cumulative and in addition to every other right provided by law or in equity, and Lender may exercise each such right in any manner deemed expedient to Lender. Lender's exercise or failure to exercise any right shall not be deemed a waiver of that right or any other right or a waiver of any default. Unless otherwise specifically provided herein, (i) Lender may grant or withhold any required consents or approvals in its sole and absolute discretion, and (ii) Lender is not required to give notice of its exercise of any of its right under this Security Instrument.
6. If the payment of the Indebtedness be extended or varied, or if any part of the security or guaranties therefor be released, all persons at any time liable therefor, or interested in the Premises, shall be held to assent to such extension, variation or release, and their liability, and the lien, and all provisions hereof, shall continue in full force and effect; the right of recourse against all such persons being expressly reserved by Lender, notwithstanding any such extension, variation or release. Any person, firm or corporation taking a junior mortgage, or other lien upon the Premises or any part thereof or any interest therein, shall take the said lien subject to the rights of Lender to amend, modify, extend or release the Note, this Security Instrument or any other Loan Document in each case without obtaining the consent of the holder of such junior lien and without the lien of this Security Instrument losing its priority over the rights of any such junior lien.
7. If any part of the Indebtedness is used directly or indirectly to satisfy, in whole or in part, any prior encumbrance upon the Premises or any part thereof, then Lender shall be subrogated to the rights of the holder thereof in and to such other encumbrance and any additional security held by such holder, and shall have the benefit of the priority of the same.
8. At the option of Lender, this Security Instrument shall become subordinate, in whole or in part (but not with respect to priority of entitlement to insurance proceeds or any award in condemnation) to any leases of all or any part of the Premises upon the execution by Lender and recording thereof, at any time hereafter, in the Office of the Recorder of Deeds for the county or counties wherein the Premises are situated, of a unilateral declaration to that effect.
9. Time is of the essence of the Note, this Security Instrument, and all other Loan Documents.
10. The captions and headings of the various Sections and paragraphs of this Security Instrument are for convenience only, and are not to be construed as limiting in any way the scope or intent of the provisions hereof. Whenever the context requires or permits, the singular shall include the plural, the plural shall include the singular, and the masculine, feminine and neuter shall be freely interchangeable.
11. Any notice or other communication which any party hereto may be required to give to any other party hereto shall be in writing, and shall be deemed given (i) when personally delivered, or (ii) on the first business day after being sent for next business day delivery by a nationally recognized overnight courier, or on the second business day after being deposited in United States registered or certified mail, postage prepaid, addressed to a party at its address set forth

UNOFFICIAL COPY

herein, or to such other address as the party to receive such notice may have designated to the other party by notice in accordance herewith. Except as otherwise specifically required herein, notice of the exercise of any right, power or option granted to Lender by this Security Instrument is not required to be given.

Q. Future Advances. This Security Instrument is given to secure a non-

revolving credit loan and shall secure not only the existing indebtedness, but also such future advances, whether such advances are obligatory or to be made at the option of the Lender, or otherwise, as are made within twenty years from the date hereof, to the same extent as if such future advances were made on the date of execution of this Security Instrument, although there may be no advance made at the time of execution of this Security Instrument, and although there may be no indebtedness outstanding at the time any advance is made. The lien of this Security Instrument shall be valid as to all such indebtedness and future advances from the time this Security Instrument is filed for record in the office of the Recorder of Deeds of the county or counties where the premises are located. The total amount of indebtedness secured hereby may increase or decrease from time to time, but the total unpaid balance at any one time of the loan shall not exceed the maximum principal amount of the Note, plus interest thereon, and any disbursements made for the payment of taxes, special assessments, or insurance, with interest on such disbursements. Furthermore, notwithstanding anything contained in this Security Instrument to the contrary, in no event shall the total amount of the outstanding indebtedness hereby secured, including loan proceeds disbursed plus any additional charges, exceed 50% of the principal face amount of the Note. It, and only it, the Note or Loan Documents explicitly provide that the loan secured by this Security Instrument is a revolving loan, as Mortgagor repays all or a portion of the outstanding balance of the loan, Mortgagor may reborrow on a revolving loan basis additional funds, all subject to, and only to the extent specifically provided for by, the terms and conditions of the Note and Loan Documents. All such borrowings shall be included within the indebtedness secured hereby, and shall be secured by this Security Instrument. This Security Instrument is intended to and shall be valid and have priority over all subsequent liens and encumbrances, including statutory liens, excepting therefrom solely taxes and assessments levied on the premises, to the extent of the maximum amount secured hereby.

R. Business Loan. The proceeds of the loan secured by this Security Instrument will be used for the purpose specified in 11 U.S.C. 205-4(1)(c) and the loan secured hereby constitutes a business loan within the meaning of said section. Accordingly, the loan secured hereby is exempt from the Illinois usury provisions.

S. Security Agreement. Mortgagor and Lender agree that this Security Instrument shall constitute a Security Agreement within the meaning of the Illinois Uniform Commercial Code (hereinafter referred to as the "code") with respect to (1) all sums at any time on deposit for the benefit of Lender or held by the Lender (whether deposited by or on behalf of the Mortgagor or anyone else) pursuant to any of the provisions of the Security Instrument or the Loan Documents and (2) any personal property included in the granting clauses of this Security Instrument, which personal property may not be deemed to be attached to the premises or may not constitute a "fixture" (within the meaning of Section 9-313 of the Code), which property is hereinafter referred to as "personal property" and all replacements of, substitutions for, additions to, and the proceeds

515969515

UNOFFICIAL COPY

thereof (all of said Personal Property and the replacements, substitutions and additions thereto and the proceeds thereof being sometimes hereinafter collectively referred to as the "Collateral"), and that a security interest in and to the Collateral is hereby granted to the Lender, and the Collateral and all of Mortgagor's right, title and interest therein are hereby assigned to the Lender, all to secure payment of the Indebtedness. All of the provisions contained in this Security Instrument pertain and apply to the Collateral as fully and to the same extent as to any other property comprising the Premises; and the following provisions of this Section shall not limit the applicability of any other provision of this Security Instrument but shall be in addition thereto:

1. Mortgagor (being the Debtor as that term is used in the Code) is and will be the true and lawful owner of the Collateral, subject to no liens, charges or encumbrances other than the lien hereof, other liens and encumbrances benefitting Lender and no other party, and liens and encumbrances, if any, expressly permitted by this Security Instrument or Loan Documents.
2. The Collateral is to be used by Mortgagor solely for business purposes.
3. The Collateral will be kept at the Land, and will not be removed therefrom without the consent of Lender (being the Secured Party as that term is used in the Code). The Collateral may be affixed to the Land but will not be affixed to any other real estate.
4. The only persons having any interest in the Premises are Mortgagor, Lender and holders of interests, if any, expressly permitted by this Security Instrument or Loan Documents.
5. No Financing Statement (other than Financing Statements showing Lender as the sole secured party, or with respect to liens or encumbrances, if any, expressly permitted by this Security Instrument or Loan Documents) covering any of the Collateral or any proceeds thereof is on file in any public office except pursuant hereto; and Mortgagor will at its own cost and expense, upon demand, furnish to Lender such further information and will execute and deliver to Lender such financing statements and other documents in form satisfactory to Lender and will do all such acts as Lender may at any time or from time to time request or as may be necessary or appropriate to establish and maintain a perfected security interest in the Collateral as security for the Indebtedness, subject to no other liens or encumbrances, other than liens or encumbrances benefitting Lender and no other party and liens and encumbrances (if any) expressly permitted by this Security Instrument or Loan Documents; and Mortgagor will pay the cost of filing or recording such financing statements or other documents, and this instrument, in all public offices wherever filing or recording is deemed by Lender to be desirable.
6. Upon Default hereunder, Lender shall have the remedies of a secured party under the Code, including without limitation, the right to take immediate and exclusive possession of the Collateral, or any part thereof, and for that purpose may, so far as Mortgagor can give authority therefor, with or without judicial process, enter (if this can be done without breach of the peace), upon any place which the Collateral or any part thereof may be situated and remove the same therefrom (provided that if the Collateral is affixed to real estate, such removal shall be subject to the conditions stated in the Code); and Lender shall be entitled to hold, maintain, preserve and prepare the Collateral for sale, until disposed of, or may propose to retain the Collateral in satisfaction of Mortgagor's obligations, as provided in the Code. Lender may render the Collateral unusable without removal and may dispose of the Collateral on the Premises. Lender may require

95486515

UNOFFICIAL COPY

1. Prepayment Premium. It is a condition of this Security Instrument that in the event of prepayment of the indebtedness before maturity, Lender will be entitled to a prepayment premium to the extent provided in the Note or, if attached hereto and hereby made a part hereof, Exhibit B. Following the acceleration of the maturity of the Note by Lender, or if the Note is prepaid in whole or in part prior to the maturity date due to the application of insurance or condemnation proceeds, the prepayment premium shall apply to the amount necessary to satisfy the entire indebtedness, or the amount of principal so prepaid, as applicable, and such premium shall be part of the principal balance of the Note. Lender and Borrower have negotiated the loan upon the understanding that if the Note is paid or prepaid prior to maturity for any reason, Lender shall receive the prepayment premium provided for as partial compensation for the cost of reinvesting the proceeds of the loan and the loss of the contracted rate of return on the loan; provided, however, that the payment of the prepayment premium shall in no way be a substitute for or in lieu of any and all damages or other remedies available to Lender under the Note, this Security Instrument, or the other Loan Documents.

Mortgagor to assemble the collateral and make it available to Lender for its possession at a place to be designated by Lender which is reasonably convenient to both parties. Lender will give Mortgagor at least twenty (20) days notice of the time and place of any public sale of the collateral or of the time after which any private sale or any other intended disposition thereof is made. The requirements of reasonable notice shall be met if such notice is mailed, by registered or certified United States mail or equivalent, postage prepaid, to the address of Mortgagor herein set forth at least twenty days before the time of the sale or disposition. Lender may buy at any public sale, Lender may buy at private sale if the collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations. Any such sale may be held in conjunction with any foreclosure sale of the premises. If Lender so elects, the premises and the collateral may be sold as one lot. The net proceeds realized upon any such disposition, after deduction for the expenses of retaking, holding, preparing for sale, selling and the reasonable attorney's fees and legal expenses incurred by Lender, shall be applied against the indebtedness in such order or manner as Lender shall select. Lender will account to Mortgagor for any surplus realized on such disposition.

7. The terms and provisions contained in this section shall, unless the context otherwise requires, have the meanings and be construed as provided in the Code.

8. This Security Instrument is intended to be a financing statement within the purview of Section 9-402(6) of the Code with respect to the collateral and the goods described herein, which goods are or may become fixtures relating to the premises. The addresses of Mortgagor (Debtor) and Lender (Secured Party) are herein set forth. This Security Instrument is to be filed for record with the Recorder of Deeds of the county or counties where the premises are located. Mortgagor is the record owner of the premises.

9. To the extent permitted by applicable law, the security interest created hereby is specifically intended to cover all leases between Mortgagor or its agents as lessor, and various tenants named therein, as lessee, including all extended terms and all extensions and renewals of the terms thereof, as well as any amendments to or replacement of said leases, together with all of the right, title and interest of Mortgagor, as lessor thereunder.

5198456

UNOFFICIAL COPY

U. Trustee Exculpatory. In the event any Mortgagor executing this Security Instrument is an Illinois land trust, this Security Instrument is executed by such Mortgagor not personally, but as trustee of such land trust in the exercise of the power and authority conferred upon and vested in it as such trustee. All covenants, agreements and conditions to be performed by trustee hereunder are undertaken by it solely as trustee as aforesaid and not individually, and no personal liability shall be asserted or be enforceable against trustee because or in respect of this Security Instrument or the making, issuance or transfer hereof, all such liability, if any, being expressly waived by Lender; provided, however, that nothing contained herein shall (i) be deemed a release or impairment of the Indebtedness or the lien of this Security Instrument or other Loan Documents, or the right to enforce and foreclose such liens or other rights and remedies under any of the Loan Documents, (ii) limit, modify or reduce any liability of any co-maker of the Note or any guarantor or other party under any Loan Documents, or (iii) limit Lender's right to collect or recover against any assets of the trust.

V. Partial Releases. Lender shall provide partial releases upon receipt of 100% of net proceeds as approved by Lender. Lender shall charge a partial release fee of \$3,000.00 per unit for a total of thirteen lots (\$39,000.00).

W. Prior Mortgage The Premises subject hereto is subject to a Prior Mortgage (the "Prior Mortgage") filed with the Recorder of Deeds of Cook County, Illinois, made by Aetna Bank a/t/u Trust Agreement dated 6/30/95 to secure a note in the amount of \$2,000,000.00. Any default under the Prior Mortgage shall be considered a default hereunder, which default, notwithstanding anything contained to the contrary herein or contained in the Note which this Security Instrument secures, shall have the same grace period, if any, for curing defaults as set forth in the Prior Mortgage. This Security Instrument is subordinate and junior to the the Prior Mortgage as subordinated by a Subordination Agreement of even date herewith, the provisions of which are incorporated herein by reference.

X. Rider. The riders and exhibits attached hereto, if any, are hereby made a part hereof.

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

TRUSTEE:

AETNA BANK, not personally, but solely as Trustee aforesaid:

By: Christine Murphy 7/17/95
 CONSTANT TRUST OFFICER
 X Gail Caspo

BENEFICIARY:

3425 N. RACINE, L.L.C., an Illinois Limited Liability Company
 BY: Atlas Development Corp., Manager

By: Steven Siegel, President

By: David Kaiser, Vice President

Attest: [Signature]
 This Document is signed by Aetna Bank, not individually, but solely as Trustee under Trust Agreement mentioned in said document. Said Trust Agreement is hereby made a part hereof and any claims against said Trustee which may result therefrom shall be held against said Trustee only out of any trust property and shall not be held against Aetna Bank. Aetna Bank is not liable for the validity or the enforceability of any of the provisions of this document or for the validity or the enforceability of any of the provisions of any other instrument executed by the parties hereto and to be held as if they were not made. All warranties, covenants, independent and representations of each kind are those of the Trustee's beneficiaries only and shall not in any way be considered the responsibility and liability of Aetna Bank. This Trustee's exculpatory clause shall be controlling in the event of a conflict of terms created by the documents executed by Aetna Bank as Trustee.

95486515

UNOFFICIAL COPY

EXHIBIT "A"

LEGAL DESCRIPTION:

THAT PART OF LOT 27 LYING NORTH OF THE RIGHT OF WAY OF THE NORTHWESTERN ELEVATED RAILROAD AND ALL OF LOTS 28, 29 AND 30 IN BLOCK 1 IN GEORGE CLEVELAND'S SUBDIVISION OF LOT 3 IN ASSESSOR'S DIVISION OF THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 20, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

PERMANENT INDEX NUMBER:

14-20-411-032

PROPERTY COMMONLY KNOWN AS:

3425 North Racine, Chicago, Illinois

95486515

BOX 333-CTI

Mail To:

THIS INSTRUMENT WAS PREPARED BY: return to

Carmen Rosario
Mid Town Development Corporation
2021 NORTH CLARK STREET
CHICAGO, ILLINOIS 60614

UNOFFICIAL COPY

Property of Cook County Clerk's Office