

# UNOFFICIAL COPY

95657726

This instrument prepared by  
and please return to:  
Robert J. Krull, Esq.  
100 West Monroe Street #1500  
Chicago, Illinois 60603

657726 RECORDING \$77.00  
110912 TEAM 6577 09/28/95 10:39:00  
5375 1 CG # 95-657726  
Clerk COUNTY RECORDER

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7525334 02/24

P.I.N.: 14-21-314-008-0000; 14-21-314-009-0000  
COMMONLY KNOWN AS: 515 West Melrose, Chicago, Illinois

77.00  
ml

## REAL ESTATE MORTGAGE, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND UCC-2 FINANCING STATEMENT

**THIS INSTRUMENT** is a Real Estate Mortgage, Assignment of Rents, Security Agreement and UCC-2 Financing Statement ("Mortgage") made and delivered jointly and severally by 515 Melrose Associates Limited Partnership ("Beneficiary"), and LaSalle National Trust, N.A., as Trustee ("Trustee") under a Trust Agreement dated February 1, 1986 and known as its Trust No. 110707 (Trustee and Beneficiary are collectively referred to herein as "Mortgagor") to Comerica Bank-Illinois (herein, together with its successors and assigns, called the "Mortgagee").

WHEREAS, Mortgagor, has concurrently herewith pursuant to a certain Credit Agreement of same date ("Credit Agreement") executed and delivered to Mortgagee a promissory note dated the date hereof entitled "Promissory Note" in the principal amount of \$1,762,500 ("Note"), bearing interest and payable in the amounts and at the times set forth and otherwise in the form attached hereto as Exhibit A; and

WHEREAS, the indebtedness evidenced by the Note, the undertakings by Mortgagor in this instrument and any and all other sums which may at any time be due, owing or required to be paid as herein or in the Note provided are herein called "Indebtedness Hereby Secured." In no event shall the Indebtedness Hereby Secured exceed 300% of the principal amounts of the Note.

### NOW, THEREFORE:

TO SECURE the payment and performance of Indebtedness Hereby Secured and other good and valuable considerations, the receipt and sufficiency of which is hereby acknowledged,

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BOX 333-CTI

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Mortgagor does hereby MORTGAGE, WARRANT and CONVEY to Mortgagee the Real Estate described in Exhibit B ("Real Estate") together with all of its rights, title and interest in and to the property mentioned in the next succeeding paragraphs (collectively "Premises").

TOGETHER with and including within the term "Premises" as used herein any and all equipment, personal property, improvements, buildings, structures, easements, fixtures, privileges, reservations, appurtenances, rights and estates in reversion or remainder, rights in or to adjacent sidewalks, alleys, streets and vaults, and any and all rights and interests of every name and nature now or hereafter owned by Mortgagor, forming a part of and/or used in connection with the Real Estate and/or the operation and convenience of the buildings and improvements now or hereafter located thereon.

AND TOGETHER with a security interest in (by way of enumeration but without limitation) all personal property, accounts receivable, bank accounts, furniture, furnishings and equipment used in connection with the existence and operation of the Real Estate or furnished by Mortgagor to tenant thereof, all building materials located at the Real Estate and intended to be incorporated in improvements now or hereafter to be constructed thereon, whether or not incorporated therein, machines, machinery, fixtures, apparatus, equipment and articles used to supply heating, gas, electricity, air conditioning, water, light, power, sprinkler protection, waste removal, refrigeration and ventilation, and all floor coverings, screens, storm windows, blinds, awnings; in each case now or hereafter placed in, on or at the Real Estate and all additions and accessions and all proceeds of all of the foregoing. All of the foregoing shall hereinafter be referred to as "Personal Property." The enumeration of any specific articles of Personal Property shall in no way exclude or be held to exclude any items of property not specifically enumerated.

AND TOGETHER with all of the rents, income, receipts, revenues, issues and profits thereof and therefrom; and all of the land, estate, property and rights hereinabove described and hereby conveyed and intended so to be, whether real, personal or mixed, and whether or not affixed or annexed to the Real Estate are intended to be as a unit and are hereby understood, agreed and declared to form a part and parcel of the Premises and to be appropriated to the use of the Premises and for the purposes hereof shall be deemed to be real estate mortgaged and warranted hereby.

TO HAVE AND TO HOLD all and sundry of the Premises hereby mortgaged and warranted or intended so to be, together with the rents, issues and profits thereof, unto Mortgagee forever, free from all rights and benefits under and by virtue of the Homestead Exemption Laws of the State of Illinois (which rights and benefits are hereby expressly released and waived), for the uses and purposes herein set forth, together with all right to retain possession of the Premises after any default in the payment of all or any part of the Indebtedness Hereby Secured, or the breach of any covenant or agreement herein contained, or upon the occurrence of any Event of Default as hereinafter defined.

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PROVIDED, that if all Indebtedness Hereby Secured shall be duly and punctually paid, there is no further availability of Loans under the Credit Agreement, and all terms, provisions, conditions and agreements herein contained and contained in the Credit Agreement on the part of Mortgagor to be performed or observed shall be strictly performed and observed, then this Mortgage and the estate, right and interest of Mortgagee in the Premises shall cease and be of no effect.

## AND IT IS FURTHER AGREED THAT:

1. Payment of Indebtedness. Mortgagor will promptly pay the principal and interest on the Note, and all other Indebtedness Hereby Secured, as the same become due, and will duly perform and observe all of the covenants, agreements and provisions herein and in the Note required.

2. Maintenance, Repair, Restoration, Prior Liens, Parking, Etc. Mortgagor will (a) promptly construct, repair, restore and rebuild any buildings or improvements now or hereafter on the Premises or Personal Property used on or in connection with the Real Estate which may become damaged or be destroyed whether or not proceeds of insurance are available or sufficient for the purpose; (b) keep the Premises and Personal Property in good condition and repair, without waste, and free from mechanics', materialmen's or like liens or claims or other liens or claims for lien; (c) pay, when due, any indebtedness which may be secured by a lien or charge on the Premises or Personal Property superior to the lien hereof, and upon request exhibit satisfactory evidence of the discharge of such prior lien to Mortgagee; (d) complete, within a reasonable time, any building or buildings now or at any time in the process of erection upon the Premises; (e) comply with all requirements of law, municipal ordinances or restrictions and covenants of record with respect to the Premises and Personal Property and the use thereof; (f) make no material alterations in the Premises, except as required by law or municipal ordinance without Mortgagee's prior written consent; (g) make or permit no change in the general nature of the occupancy of the Premises without Mortgagee's prior written consent; (h) pay all operating costs of the Premises; (i) not initiate nor acquiesce in any zoning reclassification with respect to the Premises without Mortgagee's prior written consent and (j) provide, improve, grade, surface and thereafter maintain, clean and repair any sidewalks, aisles, streets, driveways and sidewalk cuts and paved areas for parking and for ingress, egress and right-of-way to and from the adjacent public thoroughfares necessary or desirable for the use thereof; and reserve and use all such areas solely and exclusively for the purpose of providing parking, ingress and egress for tenants or invitees of tenants of the Premises; and Mortgagor will not reduce, build upon, obstruct, redesignate or relocate any such areas or rights-of-way or lease or grant any rights to use the same to any person except tenants and invitees of tenants of the Premises without prior written consent of Mortgagee. Notwithstanding the foregoing prohibition against encumbrances, Mortgagor may in good faith and with reasonable diligence contest the validity or amount of any Mechanic's Lien and defer payment and discharge thereof during the pendency of such contest, provided that: (a) such contest shall prevent the sale or forfeiture of the Premises or any part thereof, or any interest therein, to satisfy such Mechanic's Lien; (b) within ten (10) days after Mortgagor has been notified of the filing of such Mechanic's Lien, Mortgagor shall have notified Mortgagee in writing of Mortgagor's intention to contest such Mechanic's

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Lien; and (c) Mortgagor shall have either obtained a title insurance endorsement over such Mechanic's Liens insuring Mortgagee against loss by reason of the Mechanic's Liens or Mortgagor shall have deposited with Mortgagee at such place as Mortgagee may from time to time in writing appoint, and in the absence of such appointment, then at the place of payment designated in the Note, a sum of money (the "Deposits") which shall be sufficient in the judgment of Mortgagee to pay in full such Mechanic's Liens and all interest which might become due thereon. Mortgagor shall increase the Deposits whenever, in the judgment of Mortgagee, such increase is advisable. Mortgagee shall deposit such Deposits in a so-called Money Market Account, or a reasonably equivalent account, and the interest earned thereon shall inure to the benefit of Mortgagor. Mortgagee may, at its option, pay the Deposits, or any part thereof, to the Mechanic's Lien claimant if Mortgagor (i) fails to maintain sufficient Deposits or (ii) fails to act in good faith or with reasonable diligence in contesting the Mechanic's Liens claims. If the Mechanic's Lien contest is resolved in favor of the claimant and Mortgagor is not in default hereunder, Mortgagee shall pay the Deposits, or any part thereof, to the claimant upon Mortgagee's receipt of evidence satisfactory to Mortgagee of the amount to be paid. Mortgagee shall pay any remaining Deposits to Mortgagor, provided Mortgagor is not in default hereunder.

3. Taxes. Mortgagor will pay when due before any penalty attaches all general and special taxes, assessments, water charges, sewer charges, and other fees, taxes, charges and assessments of every kind and nature whatsoever (all herein generally called "Taxes") assessed against or applicable to the Premises, the Personal Property or any interest therein, or the Indebtedness Hereby Secured, and Mortgagor will furnish to Mortgagee duplicate receipts therefor. Mortgagor will pay in full, under protest in the manner provided by statute, any Taxes which Mortgagor may desire to contest. However, if deferment of payment is required to conduct any contest or review, Mortgagor shall deposit the full amount thereof, together with an amount equal to the interest and penalties during the period of contest (as estimated by Mortgagee) with Mortgagee. In any event, Mortgagor shall (and if Mortgagor shall fail to do so, Mortgagee may, but shall not be required to, use the monies deposited as aforesaid) pay all Taxes, notwithstanding such contest, if in the opinion of Mortgagee, the Premises shall be in jeopardy or in danger of being forfeited or foreclosed. In the event any law or court decree has the effect of deducting from the value of land for the purpose of taxation any lien thereon, or imposing upon Mortgagee the payment of the whole or any part of the Taxes or liens herein required to be paid by Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or the interest of Mortgagee in the Premises or the manner of collection of Taxes so as to affect this Mortgage or the Indebtedness Hereby Secured or the holder thereof, then, and in any such event, Mortgagor upon demand by Mortgagee will pay such Taxes or reimburse Mortgagee therefore. Nothing herein contained shall require Mortgagor to pay any income, franchise or excise tax imposed upon Mortgagee, excepting only such which may be levied against such income expressly as and for a specific substitute for Taxes on the Premises and then only in an amount computed as if Mortgagee derived no income from any source other than its interest hereunder.

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4. Insurance Coverage. Mortgagor will keep insured all buildings and improvements on the Premises and all Personal Property against such risks, perils and hazards as Mortgagee may from time to time require, including but not limited to:

(a) Insurance against loss by fire and risks covered by the so-called extended coverage endorsement in amounts equal to the full replacement value of the Premises but not less than the amount of the Note;

(b) Public liability insurance against bodily injury, death and property damage in the amount of not less than \$1,000,000 with respect to each person and to a limit of no less than \$2,000,000 with respect to any one occurrence causing injury or damage, and to the limit of not less than \$500,000 in respect to property damage;

(c) Steam boiler, machinery and other insurance of the types and in amounts as Mortgagee may require;

(d) Flood insurance if required by the Flood Disaster Protection Act of 1973 as a condition of receipt of federal or federally related financial assistance for acquisition and/or construction of buildings in amounts required by such Act.

5. Insurance Policies. All policies of insurance herein required shall be in forms, companies and amounts reasonably satisfactory to Mortgagee. Unless otherwise specified by Mortgagee, the insuring company must meet the following basic requirements: (a) it must have minimum rating according to Best's Key Rating Guide for Property - Liability of A; (b) it must be a stock company or non-assessable mutual company and incorporated in America, Canada or Britain; (c) it must be licensed to do business in Illinois; (d) it may not have more than 10% of the policyholder's surplus on any one risk; and (e) it must have all policies and endorsements manually signed. Co-insurance requirements, if any, must be met or an agreed amount endorsement attached. The maximum deductible allowable in the policy will be \$5,000 and the policy must contain a standard mortgagee clause in favor of:

Comerica Bank-Illinois  
8700 North Waukegan Road  
Morton Grove, Illinois 60053

All policies must contain a provision to the effect that any waiver of subrogation rights by the insured does not void the coverage and must contain any other special endorsements as may be required by the terms of any leases assigned as security for the Note. The Mortgagor will deliver all policies, including additional and renewal policies to Mortgagee. All insurance policies shall be prepaid for one year. In case of insurance policies about to expire, Mortgagor will deliver evidence of renewal policies prior to the respective dates of expiration. All policies shall provide that such insurance shall not be canceled, modified or terminated without thirty (30) days prior written notice to Mortgagee.

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6. Deposits for Taxes and Insurance Premiums. To assure payment of Taxes and insurance premiums payable with respect to the Premises as and when the same shall become due and payable:

(a) The Mortgagor shall deposit with Mortgagee at the time of the disbursement of the proceeds of the Note:

(i) An amount equal to one-twelfth of such Taxes multiplied by the number of months elapsed between the date on which the most recent installment for such taxes was required to be paid and the date hereof; and

(ii) An amount equal to one-twelfth of such annual insurance premiums multiplied by the number of months elapsed between the date premiums on each policy were last paid to and the date of such first deposit.

(b) Concurrently with each monthly payment installment pursuant to the Note, Mortgagor shall deposit with Mortgagee an amount equal to one-twelfth of the Taxes and one-twelfth of the insurance premiums.

(c) The amount of such deposits ("Tax and Insurance Deposits") shall be based upon the most recently available bills therefor. All Tax and Insurance Deposits shall be held by the Mortgagee without any allowance of interest thereon.

(d) Monthly Tax and Insurance Deposits, together with monthly payments of principal, if any, and interest shall be paid in a single payment each month, to be applied to the following items in the following order:

- (i) Tax and Insurance Deposits;
- (ii) Indebtedness Hereby Secured other than principal and interest on the Note;
- (iii) Interest on the Note;
- (iv) Amortization of the principal balance of the Note.

(e) Mortgagee will pay insurance premiums and Taxes from the Tax and Insurance Deposits upon the presentation by Mortgagor of bills therefor, or upon presentation of receipted bills, reimburse Mortgagor for such payments. If the total Tax and Insurance Deposits on hand are not sufficient to pay all of the Taxes and insurance premiums when due, Mortgagor will deposit with Mortgagee any amount necessary to make up the deficiency. If the total of such Deposits exceeds the amount required to pay Taxes and insurance premiums, such excess shall be credited on subsequent deposits to be made for such items.

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(f) In the Event of Default, Mortgagee may, but shall not be required to, apply Tax and Insurance Deposits on any Indebtedness Hereby Secured, in such order and manner as Mortgagee may elect. When the Indebtedness Hereby Secured has been fully paid, any remaining Tax and Insurance Deposits shall be paid to Mortgagor. All Tax and Insurance Deposits are hereby pledged as additional security for Indebtedness Hereby Secured and shall not be subject to the direction or control of the Mortgagor.

(g) Mortgagee shall not be liable for any failure to apply any amounts deposited to the payment of Taxes and insurance premiums unless while no Event of Default exists hereunder Mortgagor shall have presented to Mortgagee the appropriate Tax and insurance premium bills to be paid from the Tax and Insurance Deposits.

7. Proceeds of Insurance. Mortgagor will promptly give Mortgagee notice of damage or destruction of the Premises, and:

(a) In case of loss covered by policies of insurance, Mortgagee (or, after entry of decree of foreclosure, the Purchaser at the foreclosure sale or decree creditor) is hereby authorized, at its option (i) to settle and adjust any claim without consent of Mortgagor, or (ii) allow Mortgagor to agree with the insurance company or companies on the amount to be paid upon the loss. Mortgagor may itself adjust losses aggregating not in excess of Twenty-Five Thousand (\$25,000) Dollars. In any case Mortgagee is hereby authorized to collect and receipt for any such insurance proceeds. Expenses incurred by Mortgagee in adjustment and collection of insurance proceeds shall be additional Indebtedness Hereby Secured and shall be reimbursed to Mortgagee upon demand.

(b) In the event of any insured damage or destruction of the Premises or any part thereof (herein called an "Insured Casualty"), and:

(i) If in the judgment of Mortgagee the Premises can be restored to an economic unit not less valuable than prior to the Insured Casualty and adequately securing the outstanding balance of the Indebtedness Hereby Secured, and the insurers do not deny liability to the insureds, or

(ii) If under the terms of any lease which is prior to this Mortgage, Mortgagor is obligated to restore, repair, replace or rebuild the Premises and such Insured Casualty does not result in cancellation or termination of such lease or leases and the insurers do not deny liability to the insureds,

then, if no Event of Default as hereinafter defined shall have occurred and be then continuing, the proceeds of insurance shall be applied to the cost of restoring, repairing, replacing or rebuilding the Premises as provided in Section 8, and Mortgagor covenants and agrees to forthwith commence and diligently prosecute such restoring, repairing, replacing or rebuilding. Mortgagor shall pay all costs of such restoring, repairing, replacing or rebuilding in excess of the proceeds of insurance.

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(c) Except as provided in Subsection (b) of this Section 7, Mortgagee may apply the proceeds of insurance consequent upon any Insured Casualty upon Indebtedness Hereby Secured, in such order or manner as Mortgagee may elect.

(d) In the event proceeds of insurance shall be made available to Mortgagor for the restoring, repairing, replacing or rebuilding of the Premises, Mortgagor covenants to restore, repair, replace or rebuild the Premises to be of at least equal value and of substantially the same character as prior to such damage or destruction; all to be effected in accordance with plans and specifications to be first submitted to and approved by Mortgagee.

8. Disbursement of Insurance Proceeds. If Mortgagor is entitled to reimbursement out of insurance proceeds held by Mortgagee, such proceeds shall be disbursed from time to time, pursuant to a construction escrow established with a title insurance company acceptable to Mortgagee, upon Mortgagee being furnished with (i) satisfactory evidence of the cost of completion of restoration, repair, replacement and rebuilding, (ii) funds sufficient, in addition to the proceeds of insurance, to complete the proposed restoration, repair, replacement and rebuilding, and (iii) such architect's certificates, waivers of lien, contractor's sworn statements and other evidences of cost and payment as the Mortgagee may require and approve. No payment made prior to the final completion of the restoration, repair, replacement or rebuilding shall exceed ninety (90%) percent of the value of the labor and material for work performed from time to time. Funds other than proceeds of insurance shall be disbursed prior to disbursement of insurance proceeds. At all times the undisbursed balance of the insurance proceeds held by Mortgagee, together with funds deposited or irrevocably committed to the satisfaction of the Mortgagee by or on behalf of the Mortgagor for the purpose, shall be at least sufficient, in the judgment of Mortgagee, to pay for the cost of completing the restoration, repair, replacement or rebuilding the Premises, free and clear of all liens or claims for lien. Mortgagee shall deposit such proceeds in a so-called Money Market Account, or a reasonably equivalent account, and the interest earned thereon shall inure to the benefit of Mortgagor. Mortgagor shall pay all costs in connection with disbursement of funds pursuant to this Section.

9. Condemnation. Mortgagor hereby assigns, transfers and sets over unto Mortgagee the entire proceeds of any award or claim for damages for any of the Premises taken or damaged under the power of eminent domain or by condemnation including damages to remainder. Except as hereinafter provided in this Section, Mortgagee may apply the proceeds of the award in reduction of Indebtedness Hereby Secured then most remotely to be paid, whether due or not. Provided, however, if in the judgement of Mortgagee the Premises can be restored or rebuilt to an economic unit not less valuable than prior to the condemnation, and adequately securing the outstanding balance of the Indebtedness Hereby Secured, Mortgagee may require Mortgagor to restore or rebuild the Premises; in which event, provided there then exists no uncured Event of Default, the proceeds held by Mortgagee shall be used to reimburse Mortgagor for the cost of such rebuilding or restoring. Further provided if Mortgagor is obligated to restore or replace the damaged or destroyed buildings or improvements under the terms of any lease or leases which are prior to the lien of this Mortgage, and if such taking does not result in cancellation of such lease or leases, the award shall be used to reimburse Mortgagor for the cost of resto-

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ration and rebuilding provided that Mortgagor is not in default hereunder and that no Event of Default has occurred and is then continuing. If Mortgagor is required or permitted to rebuild or restore the Premises as aforesaid, such rebuilding or restoration shall be effected in accordance with plans and specifications submitted to and approved by Mortgagee and proceeds of the award shall be paid out in the same manner as provided in Section 8 for the payment of insurance proceeds towards the cost of rebuilding or restoration. If the amount of such award is insufficient to cover the cost of rebuilding or restoration, Mortgagor shall pay such costs in excess of the award before being entitled to reimbursement out of the award. Any surplus which may remain out of the award after payment of such costs of rebuilding or restoration shall, at the option of Mortgagee, be applied on account of the Indebtedness Hereby Secured then most remotely to be paid or be paid to any other party entitled thereto. Mortgagee shall deposit such proceeds in a so-called Money Market Account, or a reasonably equivalent account, and the interest earned thereon shall inure to the benefit of Mortgagor.

10. State Tax. If any tax is due or becomes due in respect of the issuance of the Note, Mortgagor shall pay such tax in the manner required by such law.

11. Prepayment Privilege. Mortgagor may prepay the principal of the Note at the times and in the manner set forth in the Note.

12. Effect of Extensions of Time, Amendments on Junior Liens and Others. If payment of the Indebtedness Hereby Secured, or any part thereof, be extended or varied, or if any part of the security be released, all persons now or at any time hereafter 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 Mortgagee, notwithstanding any such extension, variation or release. Any junior mortgage, or other lien upon the Premises or any interest therein, shall be subject to the rights of Mortgagee to amend, modify and supplement this Mortgage, the Note and the assignment or rents and security agreement contained herein, and to extend the maturity of the Indebtedness Hereby Secured, in each and every case without obtaining the consent of the holder of such junior lien and without the lien of this Mortgage, or any part thereof, losing its priority over the rights of any such junior lien.

13. Mortgagee's Performance of Mortgagor's Obligations. During the continuance of an Event of Default, Mortgagee either before or after acceleration of the Indebtedness Hereby Secured or the foreclosure of the lien hereof and during the period of redemption, if any, may, but shall not be required to, make any payment or perform any act herein in any form and manner deemed expedient to Mortgagee. Mortgagee may, but shall not be required to, make full or partial payments of principal or interest on superior encumbrances, if any, and pay, purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, redeem from any tax sale or forfeiture, contest any tax or assessment, and may, but shall not be required to, complete construction, furnishing and equipping of the improvements upon the Premises and rent, operate and manage the Premises and the Personal Property and pay operating costs and expenses, including management fees, of every kind and nature in connection

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therewith, so that the Premises shall be operational and usable. The amount of all monies paid for any of the purposes herein authorized, and all expenses paid or incurred in connection therewith, including attorneys fees and monies advanced to protect the Premises and the lien hereof, shall be additional Indebtedness Hereby Secured, whether or not they exceed the amount of the Note, and shall become immediately due and payable without notice, and with interest thereon at the Default Rate specified in the Note (herein called the "Default Rate"). Inaction of Mortgagee shall never be considered as a waiver of any right accruing to it on account of any default on the part of Mortgagor. Mortgagee, in making any payment hereby authorized: (a) relating to taxes and assessments, 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 other superior 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, 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 Mortgagee may deem appropriate and may enter into such contracts therefor as Mortgagee may deem appropriate or may perform the same itself.

14. Inspection of Premises. Mortgagee may inspect the Premises at all reasonable times and shall have access thereto permitted for that purpose.

15. Restrictions on Transfer. It shall be an immediate Event of Default and default hereunder if, without the prior written consent of Mortgagee:

(a) Mortgagor shall create, effect, lease (other than residential leases of 2 years or less), contract or consent to or shall suffer or permit any conveyance, sale, encumbrance, lien or alienation of the Premises or any part thereof or interest therein, except for (i) Permitted Liens (as defined in the Credit Agreement), (ii) liens for which Mortgagee gives its written consent, (iii) sales or other dispositions of any equipment or machinery constituting part of the Premises no longer useful in connection with the operation of the Premises, provided that prior to the sale or other disposition thereof, such obsolete machinery or equipment has been replaced by machinery and equipment of at least equal value and utility, subject to the first and prior lien hereof, or (iv) sale or disposition of other personalty in the ordinary course of business; or

(b) If all or any part of the beneficial interest in Mortgagor, or any successor in interest shall be sold, assigned or transferred, or contracted to be sold (unless the Indebtedness Hereby Secured is to be paid from the proceeds of sale), assigned or transferred without the prior consent of Mortgagee;

in each case it shall be an Event of Default even though such conveyance, sale, assignment, encumbrance, lien or transfer is affected directly, indirectly, voluntarily or involuntarily, by operation of law or otherwise. Provided, however, that the foregoing provisions of this Section

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shall not apply to liens securing Indebtedness Hereby Secured, nor to the lien of current taxes and assessments not in default.

16. Events of Default. If one or more of the following events (herein called "Events of Default") shall occur:

(a) If default be made for five days in the payment of any installment of principal or interest of the Note, or if default be made for fifteen days after notice in the making of any other payment of monies required to be made hereunder or under the Note; or

(b) If a default pursuant to Section 15 hereof shall occur and be continuing, without notice or period of grace of any kind; or

(i) any Mortgagor shall file a petition in voluntary bankruptcy under any Federal Bankruptcy Act or similar law, state or federal, now or hereafter in effect,

(ii) any Mortgagor shall file an answer or otherwise in writing admit insolvency or inability to pay its debts,

(iii) Within ninety (90) days after the filing against any Mortgagor of any involuntary proceedings under such Bankruptcy Act or similar law, such proceedings shall not have been vacated or stayed,

(iv) any Mortgagor shall be adjudicated a bankrupt, or a trustee or receiver shall be appointed for any Mortgagor or for all or a major part of any Mortgagor's property or the Premises, or any court shall take jurisdiction of all or the major part of any Mortgagor's property or the Premises in any involuntary proceedings for the reorganization, dissolution, liquidation or winding up of any Mortgagor, and such trustee or receiver shall not be discharged or jurisdiction relinquished or vacated or stayed on appeal or otherwise stayed within ninety (90) days, or

(v) any Mortgagor shall make an assignment for the benefit of creditors or shall admit in writing its inability to pay its debts generally as they become due or shall consent to the appointment of a receiver or trustee or liquidator of all or the major part of its property or the Premises; or

(c) If default shall continue for fifteen (15) days after notice thereof by Mortgagee to Mortgagor in the due and punctual performance or observance of any other agreement or condition herein or contained in the Note except if the nature of the default is such that it cannot be cured in fifteen days and cure is begun within fifteen days and thereafter diligently pursued such default shall not be considered an Event of Default; or

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- (d) If the Premises shall be abandoned; or
- (e) If any of the Makers of the Note shall die or be declared legally incompetent;

then Mortgagee is authorized and empowered, at its option, without affecting the lien hereby created or the priority of said lien or any right of Mortgagee hereunder, to declare, without further notice all Indebtedness Hereby Secured immediately due and payable, whether or not such default be thereafter remedied by Mortgagor, and Mortgagee may immediately proceed to foreclose this Mortgage and to exercise any right, power or remedy provided by this Mortgage, the Note, any document securing the Note or by law or in equity.

17. Foreclosure. Upon an Event of Default, not cured within the time permitted for cure, if any, Mortgagee shall have the right to foreclose the lien hereof for the Indebtedness Hereby Secured or any part thereof. In any suit or proceeding to foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the decree for sale, all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for attorneys' fees, appraisers' fees, outlays for documentary and expert evidence, stenographers' charges, publication costs and costs (which may be estimated as to items to be expended after entry of the decree) of procuring abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to title to prosecute such suit or to evidence to bidders at sales, which may be had pursuant to such decree, the true conditions of the title to or value of the Premises. All expenditures and expenses in this Section mentioned and expenses and fees as may be incurred in the protection of said Premises and the maintenance of the lien of this Mortgage, including the fees of any attorney employed by Mortgagee in any litigation or proceedings affecting this Mortgage, the Note or the Premises, including probate and bankruptcy proceedings, or in preparation for the commencement or defense of any proceeding or threatened suit or proceeding, shall be immediately due and payable by the Mortgagor, with interest thereon at the Default Rate as set forth in the Note.

18. Receiver. During the continuance of an Event of Default, upon, or at any time after, the filing of a complaint to foreclose this Mortgage, the court may appoint a receiver of the Premises. Such appointment shall be made as provided before or after sale, without notice, without regard to solvency or insolvency of Mortgagor and without regard to the then value of the Premises or whether the same shall be then occupied as a homestead or not. Mortgagee or any holder of the Note may be appointed as such receiver. Such receiver shall have the power to collect the rents, issues and profits of the Premises during the pendency of such foreclosure suit and, in case of a sale and a deficiency, during the full statutory period of redemption, if any, whether there be a redemption or not, as well as during any further times when the Mortgagor, except for the intervention of such receiver, would be entitled to collection of such rents, issues and profits and all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during the whole of said period. The court may, from time to time, authorize the receiver to apply the net income from the Premises in his hands in payment in whole or in part of:

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(a) the Indebtedness Hereby Secured then due or the indebtedness secured by any decree foreclosing this Mortgage, or any tax, special 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 with any excess paid to Borrower or as provided by law.

19. Insurance Upon Foreclosure. In case of an insured loss after foreclosure proceedings have been instituted, the proceeds of any insurance policies, if not applied in Mortgagee's sole discretion to rebuilding or restoring the buildings or improvements, shall be used to pay the amount due in accordance with any decree of foreclosure and any balance shall be paid as the court may direct. In the case of foreclosure of this Mortgage, the court may provide in its decree that the decree creditor may cause a new loss payable clause to be attached to each casualty insurance policy making the proceeds payable to decree creditors. Any such foreclosure decree may further provide that in 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 canceled and a new loss clause to be attached thereto, making the proceeds thereunder payable to such redeemer. In the event of foreclosure sale, Mortgagee is authorized, without the consent of Mortgagor, to assign any and all insurance policies to the purchaser at the sale or to take such other steps as Mortgagee may deem advisable to cause the interest of such purchaser to be protected by any of the said insurance policies.

20. Waiver of Redemption Rights. Mortgagor covenants and agrees that it will not at any time insist upon or plead, or in any manner whatsoever claim or take any advantage of, any stay, exemption or extension law or any so-called "Moratorium Law" now or at any time hereafter in force, or claim, take or insist upon any benefit or advantage of or from any law now or hereafter in force providing for the valuation or appraisal of the Premises, or any part thereof, prior to any sale or sales thereof to be made pursuant to any provisions herein contained, or to decree, judgment or order of any court of competent jurisdiction, or after such sale or sales claim 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. Mortgagor expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage on its own behalf and on behalf of each and every person, excepting only decree or judgment creditors of Mortgagor acquiring any interest or title to the Premises subsequent to the date hereof, it being the intent hereof that any and all such rights of redemption of Mortgagor and of all other persons are and shall be deemed to be hereby waived to the full extent permitted by law. Mortgagor will not invoke or utilize any such law or laws or otherwise hinder, delay or impede the execution of any right, power and remedy as though no such law or laws have been made or enacted.

21. Mortgagee in Possession. Nothing shall be construed as constituting Mortgagee a mortgagee in possession in the absence of actual taking of possession of the Premises by Mortgagee.

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22. Mortgagee's Right of Possession. During the continuance of an Event of Default, upon or at any time after filing a complaint to foreclose this Mortgage, the court may appoint Mortgagee as mortgagee-in-possession of the Premises. Mortgagor hereby waives any rights it may have to object to such appointment. Such appointment may be made before or after sale, without notice, without regard to the solvency or insolvency of Mortgagor and without regard to the then value of the Premises. Upon such appointment, Mortgagee shall be entitled to take actual possession of the Premises, or any part thereof, personally or by its agents or attorneys, and Mortgagor shall surrender such possession to Mortgagee, together with all documents, books, records, papers and accounts of Mortgagor as may be necessary or desirable in connection with the management and operation of the Premises. Mortgagee may exclude Mortgagor, its agents and servants wholly therefrom and may act as attorney-in-fact or agent of Mortgagor, or in its own name as Mortgagee, and under the powers herein granted, hold, operate, manage and control the Premises and conduct the business thereof in such manner as it deems proper or necessary to enforce the payment or security of the avails, rents, issues and profits of the Premises, including actions for the recovery of rent, actions in forcible detainer and actions in distress for rent, and with full power:

(i) to cancel or terminate any lease or sublease for any cause or on any grounds that would entitle Mortgagor to cancel the same;

(ii) to elect or disaffirm any lease or sublease which is then subordinate to the lien hereof except to the extent proscribed by any non-disturbance agreement to which Mortgagee is a party;

(iii) to extend or modify any then existing leases and to make new leases, which extensions, modifications and new leases may provide for terms to expire or for options to lessees to extend or renew terms to expire beyond the maturity date of the Indebtedness Secured Hereby and beyond the date of the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein shall be binding upon Mortgagor and all persons whose interests in the Premises are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the mortgage indebtedness, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any purchaser;

(iv) to make all necessary or proper repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements to the Premises as to it may seem judicious;

(v) to insure and reinsure the same and all risks incidental of Mortgagee's possession, operation and management thereof;

(vi) to receive all of such avails, rents, issues and profits hereby granting full power and authority to exercise each and every of the rights, privileges and powers herein

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granted at any and all times hereafter, without notice to Mortgagor. Mortgagee shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any leases. Mortgagor shall and does hereby agree to indemnify and hold Mortgagee harmless of and from any and all liability, loss or damage 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 Mortgagee 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 attorneys' fees, shall be secured hereby and Mortgagor shall reimburse Mortgagee therefor immediately upon demand; and

(vii) to use and apply the avails, rents, issues, profits and proceeds of the Premises in payment of or on account of the following, in such order as Mortgagee may determine:

(a) to the payment of the operating expenses of the Premises, including cost of management and leasing thereof (which shall include reasonable compensation to Mortgagee and its agent or agents if management be delegated to an agent or agents, and shall also include lease commissions and other compensation and expenses of seeking and procuring tenants and entering into leases), established claims for damages, if any, and premiums on insurance hereinabove authorized;

(b) to the payment of taxes and special assessments now due or which may hereafter become due on the Premises; and, if this is a leasehold mortgage, of all rents due or which may become hereafter due under the underlying lease;

(c) to the payment of all repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements of the Premises, including but not limited to the cost from time to time of installing or replacing refrigeration and gas or electric stoves therein, and of placing the Premises in such condition as will, in the judgment of Mortgagee, make it readily rentable; and

(d) to the payment of any Indebtedness Hereby Secured or any deficiency which may result from any foreclosure sale, with the balance, if any, paid to Borrower or as provided by law.

23. Title in Mortgagor's Successors. If ownership of the Premises becomes vested in a person or persons other than Mortgagor, Mortgagee may, without notice to Mortgagor, deal with such successor or successors in interest of Mortgagor with reference to this Mortgage and the Indebtedness Hereby Secured in the same manner as with Mortgagor. Mortgagor shall give immediate written notice to Mortgagee of any conveyance, transfer or change of ownership of the Premises. Nothing in this Section shall vary or negate the provisions of Section 15 hereof.

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## 24. Assignment of Rents, Issues and Profits.

(a) Grant of Security Interest. Mortgagor hereby assigns and transfers to Mortgagee all the rents, issues and profits of the Premises and all present and future leases upon all or any part of the Premises and any and all extensions and renewals thereof ("Leases") and all security deposits or interest therein now or hereafter held by Mortgagor, and hereby gives to and confers upon Mortgagee the right, power and authority to collect such rents, issues and profits. Mortgagor irrevocably appoints Mortgagee its true and lawful attorney-in-fact, at the option of Mortgagee at any time and from time to time, to demand, receive and enforce payment, to give receipts, releases and satisfactions, and to sue in the name of Mortgagor or Mortgagee for all such rents, issues and profits and apply the same to the indebtedness secured hereby. The assignment of the rents, issues and profits of the Premises in this Section is intended to be an absolute assignment from Mortgagor to Mortgagee and not merely the passing of a security interest.

(b) Mortgagor's Representations. Mortgagor represents that: (i) it has made no prior assignment or pledge of the rents assigned hereby or of Mortgagor's interest in any of the Leases; (ii) to the best of Mortgagor's knowledge no default exists in any of the Leases (except as heretofore disclosed); (iii) to the best of Mortgagor's knowledge none of the Leases have been modified; and (iv) no prepayment of any installment of rent for more than two (2) months due under any of the Leases has been received by Mortgagor.

(c) Negative Covenants of Mortgagor. Mortgagor will not, without Mortgagee's prior written consent: (i) execute an assignment or pledge of the rents from the Premises or any part thereof or of the Mortgagor's interest in any of the Leases (except assignments for collection in the ordinary course of business); (ii) terminate or consent to the cancellation or surrender of any of the Leases except in the ordinary course of business; (iii) modify, extend or otherwise alter the terms of any of the Leases except in the ordinary course of business; (iv) accept prepayments more than two months in advance of any installments of rents to become due under any of the Leases; or (v) execute any lease of all or any portion of the Premises except for actual occupancy by the lessee thereunder.

(d) Affirmative Covenants of Mortgagor. Mortgagor at its sole cost and expense will (i) at all times promptly and faithfully abide by, discharge or perform all of the covenants, conditions and agreements contained in the Leases; (ii) enforce or secure the performance of all of the covenants, conditions and agreements of the Leases on the part of the lessees to be kept and performed except for compromises or settlements in the ordinary course of business consistent with sound business practices; (iii) appear in and defend any action or proceeding arising under, growing out of or in any manner connected with the Leases or the obligations, duties or liabilities of Mortgagor, as lessor, and of the lessees thereunder, and pay all reasonable costs and expenses of Mortgagee, including reasonable attorneys' fees, in any such action or proceeding in which Mortgagee may appear; (iv) transfer and assign to Mortgagee any and all Leases subsequently entered into, which shall be made upon the same or substantially the same terms and conditions (at current market rates) as contained in the Leases presently in

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effect, and make, execute and deliver to Mortgagee upon demand any and all instruments required to effectuate said assignment; and (v) furnish to Mortgagee, within ten (10) days after a request by Mortgagee to do so, a written statement containing the names of all lessees of the Premises or any part thereof, the terms of their respective Leases, the spaces occupied and the rentals payable thereunder as to Leases in which Mortgagor has an interest.

(e) Defeasance. Until an Event of Default, as such term is defined herein, Mortgagee shall not exercise any rights hereunder and Mortgagor shall have the right to collect upon all rents, issues, profits and advances from the Premises and to retain, use and enjoy the same. The rents, issues and profits are hereby assigned absolutely by Mortgagor to Mortgagee contingent only upon the occurrence of an Event of Default under this Mortgage or the Note.

## 25. Collection Upon Default.

(a) During the continuance of an Event of Default, Mortgagee, but without obligation so to do and without releasing Mortgagor from any obligation hereof, may make or do the same in such manner and to such extent as Mortgagee may deem necessary to protect the security hereof, including specifically, without limiting its general powers, the right to appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Mortgagee, and also the right to perform and discharge each and every obligation, covenant and agreement of Mortgagor in the Leases contained, and in exercising any such powers to incur and pay necessary and reasonable costs and expenses, including reasonable attorneys' fees, all at the expense of Mortgagor.

(b) Mortgagee shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under the Leases or under or by reason of this assignment. Mortgagor shall and does hereby agree to indemnify and hold Mortgagee harmless of and from any and all liability, loss or damage which it may or might incur under the Leases or under or by reason of this Mortgage and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertaking on its part to perform or discharge any of the terms, covenants or agreements contained in the Leases. Should Mortgagee incur any such liability, loss or damage under the Leases or under or by reason of this assignment or in the defense of any such claims or demands, the amount thereof, including reasonable costs, expenses and reasonable attorneys' fees shall be secured hereby, and Mortgagor shall reimburse Mortgagee therefor with interest at the default rate provided in the Note immediately upon demand.

(c) A demand on any lessee by Mortgagee for the payment of the rent on any Event of Default claimed by Mortgagee shall be sufficient warrant to the lessee to make future payment of rents to Mortgagee without the necessity for further consent by Mortgagor, and any person may and is hereby authorized to rely thereon.

(d) To the extent that Mortgagor has the right to so do, Mortgagor does further specifically authorize and instruct each and every present and future lessee of the whole

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or any part of the Premises to pay all unpaid rental agreed upon in any tenancy to Mortgagee upon receipt of demand from Mortgagee to pay the same, and Mortgagor hereby waives the right, claim or demand it may now or hereafter have against any such lessee by reason of such payment of rental to Mortgagee or compliance with other requirements of Mortgagee pursuant to this assignment. Mortgagee shall make a demand on such lessees only after an Event of Default.

(e) Upon or at any time during the continuance of an Event of Default, Mortgagee may, without further notice, either in person or by agent with or without bringing any action or proceeding, or by a receiver to be appointed by a court, and, either with or without taking possession of the Premises, in the name of Mortgagor or in its own name sue for or otherwise collect and receive such rents, issues, profits and advances, including those past due and unpaid, and apply the same, less reasonable costs and expenses of operation and collection, including, but not being limited to, reasonable attorneys' fees, management fees and broker's commissions upon any indebtedness secured hereby, and in such order as Mortgagee may determine. Mortgagee reserves, within its own discretion, the right to determine the method of collection and the extent to which enforcement of collection of delinquent rents shall be prosecuted and shall not be accountable for more monies than it actually receives from the Premises. The entering upon and taking possession of the Premises or the collection of such rents, issues, profits and advances and the application thereof, as aforesaid, shall not cure or waive any default hereunder and Mortgagee may continue to so possess and collect even after any such default has been cured. Mortgagor agrees that it will facilitate in all reasonable ways Mortgagee's collection of said rents, and will, upon request by Mortgagee, promptly execute a written notice to each lessee directing the lessee to pay rent to Mortgagee.

26. Security Agreement. This instrument shall also serve as a grant of security interest of the Personal Property provided herein. Concurrently with the execution hereof, Mortgagor will execute such UCC Financing Statements as are requested by Mortgagee, and will from time to time thereafter forthwith upon request by Mortgagee execute such additional Financing Statements and Continuation Statements as Mortgagee may request.

Mortgagor hereby makes the following representations and warranties regarding the Personal Property:

- (a) the Personal Property is bought or used primarily for business use;
- (b) the Personal Property (except for receivables and bank accounts) will be kept at the Premises. Mortgagor will not remove the Personal Property from the Premises without the prior written consent of Mortgagee, which consent may be withheld in Mortgagee's sole and absolute discretion, unless the Personal Property is obsolete, damaged, sold or disposed of and replaced by Personal Property of comparable quality and value except as otherwise provided herein;

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(c) except for the security interest granted hereby Mortgagor is the owner of the Personal Property free from any adverse lien, security interest or encumbrance; and Mortgagor will defend the Personal Property against all claims and demands of all persons at any time claiming the same or any interest therein;

(d) no effective Financing Statement covering any of the Personal Property or any proceeds thereof is on file in any public office, other than financing statements to be released by reason of payments to be made from disbursements of monies borrowed and secured hereby. Mortgagor shall immediately notify Mortgagee in writing of any change in name, address, identity or ownership structure from that shown in this Mortgage and shall also upon demand furnish to Mortgagee such further information and shall execute and deliver to Mortgagee such financing statements and other documents in form satisfactory to Mortgagee and shall do all such acts and things as Mortgagee may at any time or from time to time reasonably request or as may be necessary or appropriate to establish and maintain a perfected security interest in the Personal Property as security for the Indebtedness Hereby Secured, subject to no adverse liens or encumbrances; and Mortgagor will pay the cost of filing the same or filing or recording this Mortgage in all public offices wherever filing or recording is deemed by Mortgagee to be necessary or desirable. The original or a carbon, photographic or other reproduction of this Mortgage is sufficient as a financing statement;

(e) Mortgagor will not sell or offer to sell, assign, pledge, lease or otherwise transfer or encumber the Personal Property or any interest therein, unless such Personal Property is obsolete or sold or disposed of and is replaced by other Personal Property of comparable quality and value, without the prior written consent of Mortgagee except as otherwise provided herein; and

(f) Mortgagor will keep the Personal Property free from any adverse lien, security interest or encumbrance and in good order and repair, ordinary wear and tear excepted, shall not waste or destroy the Personal Property or any part thereof, and shall not use the Personal Property in violation of any statute, ordinance or policy of insurance thereon. Mortgagee may examine and inspect the Personal Property at any reasonable time or times, on reasonable notice, wherever located.

Until the occurrence of an Event of Default, Mortgagor may have possession of the Personal Property and use it in any lawful manner not inconsistent with this Mortgage and not inconsistent with any policy of insurance thereon.

During the continuance of an Event of Default (regardless of whether the Code has been enacted in the jurisdiction where rights or remedies are asserted) and at any time thereafter Mortgagee shall have the remedies of a secured party under the Uniform Commercial Code of Illinois, including without limitation the right to take immediate and exclusive possession of the Personal Property, 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 premises on which the Personal Property or any part thereof may be

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situated and remove the same therefrom (provided that if the Personal Property is affixed to the Real Estate, such removal shall be subject to the conditions stated in the Uniform Commercial Code of Illinois); and Mortgagee shall be entitled to hold, maintain, preserve and prepare the Personal Property for sale, until disposed of, or may propose to retain the Personal Property subject to Mortgagor's right of redemption in satisfaction of Mortgagor's obligations as provided in the Uniform Commercial Code of Illinois. Mortgagee, without removal, may render the Personal Property unusable and dispose of the Personal Property on the Premises. Mortgagee may require Mortgagor to assemble the Personal Property and make it available to Mortgagee for possession at a place to be designated by Mortgagee which is reasonably convenient to both parties. Unless the Personal Property is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Mortgagee will give Mortgagor at least fifteen (15) days' notice of the time and place of any public sale thereof or of the time after which any private sale or any other intended disposition thereof is to be made. The requirements of reasonable notice shall be met if such notice is mailed, postage prepaid, to the address of Mortgagor shown in this Mortgage at least fifteen (15) days before the time of the sale or disposition. Mortgagee may buy at any public sale and if the Personal Property 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, he may buy at private sale. The net proceeds realized upon any such disposition, after deduction for the expenses of retaking, holding, preparing for sale or lease, selling, leasing and the like and reasonable attorneys' fees and legal expenses incurred by Mortgagee both before and after judgment, if any, shall be applied in satisfaction of the Indebtedness Hereby Secured then due. Mortgagee will account to Mortgagor for any surplus realized on such disposition and Mortgagor shall remain liable for any deficiency. All rights and remedies under this Mortgage are subject to applicable bankruptcy law.

The remedies of Mortgagee hereunder are cumulative and the exercise of any one or more of the remedies provided for herein or under the Uniform Commercial Code of Illinois shall not be construed as a waiver of any of the other remedies of Mortgagee so long as any part of Mortgagor's obligations remains unsatisfied.

All rights of Mortgagee in, to and under this Mortgage and in and to the Personal Property shall pass to and may be exercised by any assignee thereof. Mortgagor agrees that if Mortgagee gives notice to Mortgagor of an assignment of said rights, upon such notice the liability of Mortgagor to the assignee shall be immediate and absolute.

Mortgagor will not set up any claim against Mortgagee as a defense, counterclaim or set-off to any action brought by any such assignee for the unpaid balance owed hereunder or for possession of the Personal Property, provided that Mortgagor shall not waive hereby any right of action to the extent that waiver thereof is expressly made unenforceable under applicable law.

27. Rights Cumulative. Each right, power and remedy conferred upon Mortgagee is cumulative and in addition to every other right, power or remedy, express or implied, given now or hereafter existing, at law or in equity, and each and every right, power and remedy so existing may be exercised from time to time as often and in such order as may be deemed

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expedient by Mortgagee, and the exercise or the beginning of the exercise of one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy. No delay or omission of Mortgagee in the exercise of any right, power or remedy shall impair any such right, power or remedy or be construed to be a waiver of any default or acquiescence therein.

28. Successors and Assigns. This Mortgage and each and every covenant, agreement and other provision hereof shall be binding upon Mortgagor and its successors and assigns, including each and every from time to time record owner of the Premises or any other person having an interest therein, and shall inure to the benefit of Mortgagee and its successors and assigns. Wherever herein Mortgagee is referred to, such reference shall be deemed to include the holder of the Note, whether so expressed or not; and each such holder of the Note shall have and enjoy all of the rights, privileges, powers, options and benefits afforded hereby and hereunder, and may enforce all and every of the terms and provisions hereof, as fully and to the same extent and with the same effect as if such from time to time holder were herein by name designated the Mortgagee.

29. Provisions Severable. The unenforceability or invalidity of any provisions hereof shall not render any other provisions herein contained unenforceable or invalid.

30. Waiver of Defense. Actions for the enforcement of the lien or any provision hereof shall not be subject to any defense which would not be good and available to the party interposing the same in an action at law upon the Note, and all such defenses are hereby waived by Mortgagor.

31. Captions and Pronouns. The captions and headings of the various sections of this Mortgage are for convenience only, and are not to be construed as confining or 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.

32. Addresses and Notices. Any notice which any party hereto may desire or may be required to give to any other party shall be in writing, and the mailing thereof by certified mail to the addresses hereafter set forth or to such other place as any party hereto may by notice in writing designate, shall constitute service of notice hereunder:

**IF TO MORTGAGEE:** Comerica Bank-Illinois  
8700 North Waukegan Road  
Morton Grove, Illinois 60053  
Attention: Commercial Real Estate

**IF TO MORTGAGOR:** 515 Melrose Associates Limited  
Partnership  
c/o Banner Investments, Inc.

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300 West Grand Avenue, Suite 430  
Chicago, Illinois 60610

and

LaSalle National Trust, N.A. as Trustee  
under Agreement dated February 1, 1986  
and known as its Trust No. 110707  
135 South LaSalle Street  
Chicago, Illinois 60603

33. No Liability on Mortgagee. Notwithstanding anything contained herein, Mortgagee shall not be obligated to perform or discharge, and does not hereby undertake to perform or discharge, any obligation, duty or liability of Mortgagor, whether hereunder, under any of the leases affecting the Premises, under any contract relating to the Premises or otherwise, and Mortgagor shall and does hereby agree to indemnify and hold Mortgagee harmless of and from any and all liability, loss or damage which Mortgagee may incur under or with respect to any portion of the Premises or under or by reason of its exercise of rights hereunder; and any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligation or undertaking on its part to perform or discharge any of the terms, covenants or agreements contained in any of the contracts, documents or instruments affecting any portion of the Premises or affecting any rights of the Mortgagor thereto. Mortgagee shall not have responsibility for the control, care, management or repair of the Premises or be responsible or liable for any negligence in the management, operation, upkeep, repair or control of the Premises resulting in loss or injury or death to any tenant, licensee, employee, stranger or other person. No liability shall be enforced or asserted against Mortgagee in its exercise of the powers herein granted to it, and Mortgagor expressly waives and releases any such liability. Should Mortgagee incur any such liability, loss or damage under any of the leases affecting the Premises or under or by reason hereof, or in the defense of any claims or demands, Mortgagor agrees to reimburse Mortgagee immediately upon demand for the full amount thereof, including costs, expenses and attorneys' fees.

34. Mortgagee not a Joint Venturer or Partner. Mortgagor and Mortgagee acknowledge and agree that Mortgagee is not and in no event shall be deemed to be a partner or joint venturer with Mortgagor or any beneficiary of Mortgagor. Mortgagee shall not be deemed to be a partner or joint venturer on account of its becoming a mortgagee in possession or exercising any rights pursuant to this Mortgage or pursuant to any other instrument or document evidencing or securing any of the Indebtedness Secured Hereby, or otherwise.

35. E.P.A. Compliance. Mortgagor covenants that the buildings and other improvements constructed on, under or above the subject real estate will be used and maintained in accordance with the applicable state or federal environmental protection agency regulations and the use of said buildings by Mortgagor or Mortgagor's lessees will not unduly or unreasonably pollute the atmosphere with smoke, fumes, noxious gases or particulate pollutants

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in violation of any such regulations. In the event Mortgagor or said lessees are served with notice of violation by any such E.P.A. Agency or other governmental authority, Mortgagor will immediately cure such violation and abate whatever nuisance or violation is claimed or alleged to exist.

36. Subsequent Loan Disbursements. This Mortgage is given to secure and shall be a valid lien as to all the Indebtedness Hereby Secured and secures presently existing Indebtedness Hereby Secured and future Indebtedness Hereby Secured as it arises within twenty years from the date hereof to the same extent as if such future Indebtedness Hereby Secured arose on the date of the execution of this Mortgage although the amount and character of the Indebtedness Hereby Secured may vary during the term of this Mortgage. This Mortgage is intended to and shall be valid and have priority over all subsequent liens and encumbrances, including statutory liens, except solely taxes levied on the Premises, to the extent of the amount of the Note, plus interest and any disbursements made pursuant to the Note and Mortgage.

37. Financing Statement. This Mortgage is intended to be a financing statement with the purview of section 9-402 (6) of the Uniform Commercial Code with respect to the collateral and the goods described herein which goods are and may become fixtures relating to the Premises. The addresses of the Mortgagor as Debtor and the Mortgagee as Secured Party are set forth herein. This Mortgage is to be filed for record with the Recorder of Deeds of the county or counties where the Premises are located.

38. Jury Waiver. Mortgagor knowingly, voluntarily and intentionally waives irrevocably the right it may have to trial by jury with respect to any legal proceeding based hereon, or arising out of, under or in connection with the Note, the Indebtedness Hereby Secured, or the Premises, or any agreement executed or contemplated to be executed in conjunction herewith or any course of conduct or course of dealing in which Mortgagee and Mortgagor are adverse parties. This provision is a material inducement for Mortgagee in granting any financial accommodation to Mortgagor.

39. Beneficiary's Exculpation. Except as provided in other documents executed in connection herewith, any personal liability or obligation of Beneficiary hereunder shall be collected only from the Beneficiary's assets and property as an Illinois partnership. No partner of the Beneficiary shall be individually or personally liable to the Beneficiary or Mortgagee on any claim arising out of this Mortgage. Neither a deficit capital account nor an obligation to loan or contribute money of any of the Beneficiary's partners shall be deemed an asset or property of the Beneficiary. Provided, however, that all of the foregoing shall not in any way affect any rights the Mortgagee may have, as a secured party or otherwise, hereunder or under the Note or any other documents entered into in connection with this Mortgage or any rights Mortgagee may have to:

(i) proceed against any entity or person whatsoever, including any of the above, with respect to the enforcement of any guaranty or as otherwise permitted in any other document or agreement between the parties,

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(ii) recover any damages, expenses or costs, including without limitation, reasonable attorneys' fees, incurred by Mortgagee as a result of fraud or waste to the Premises or other collateral hereby secured,

(iii) recover any condemnation or insurance proceeds or other similar funds or payments attributable to the collateral which under the terms of the Mortgage should have enured to Mortgagee hereunder, or

(iv) recover any amounts received by Mortgagor for security deposits, advance rents, deposits for real estate taxes and/or insurance premiums and any other advance payments in connection with the Premises and the other collateral hereby secured not otherwise applied to the payment of such items pursuant to the agreement under which the funds were collected.

40. Trustee Exculpation. This instrument is executed by LaSalle National Trust, N.A., not individually or personally, but solely as Trustee as aforesaid, in the exercise of the power and authority conferred upon and vested in them as such Trustee, and it is expressly understood and agreed that nothing herein contained shall be construed as creating any liability on Trustee personally to pay any indebtedness arising or accruing under or pursuant to this instrument, or to perform any covenant, undertaking, representation or agreement, either express or implied, contained in this instrument, all such personal liability of Trustee, if any, being expressly waived by each and every person now or hereafter claiming any right under this instrument.

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IN WITNESS WHEREOF, the undersigned have caused these presents to be executed and delivered on September 26, 1995.

515 Melrose Associates Limited Partnership

LaSalle National Trust, N.A., as Trustee under Trust Agreement dated February 1, 1986 and known as Trust No. 110707 and not personally

By: Banner Equities Limited Partnership, its general partner

By: [Signature]  
Its Vice President

By: Banner Investments, Inc., its general partner

Attest: [Signature]  
Its Assistant Secretary

By: [Signature]  
Its President

STATE OF ILLINOIS )

COUNTY OF Cook ) SS.

I, Jackie Felder, a Notary Public in and for the State and County aforesaid, do hereby certify that Corinne Bek and Nancy A. Stack, Vice President and Assistant Secretary, respectively, of LaSalle National Trust, N.A., as Trustee as aforesaid, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said Trustee, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal September 26, 1995.

[Signature] Notary Public

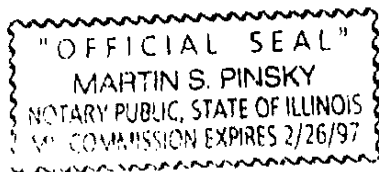
STATE OF ILLINOIS )

COUNTY OF \_\_\_\_\_ )

The undersigned, a Notary Public in and for the State and County aforesaid, does hereby certify that Milton R. Pinsky, President of Banner Investments, Inc., 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 acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said company, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal 9/26, 1995.

[Signature]  
Notary Public  
My Commission Expires: 2/26/97



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## PROMISSORY NOTE

\$1,762,500

Dated as of September 26, 1995  
Morton Grove, Illinois

FOR VALUE RECEIVED, the undersigned, LaSalle National Trust, N.A. ("Trustee"), as Trustee under Trust Agreement dated February 1, 1986 and known as its Trust No. 110707, and 515 Melrose Associates Partnership ("Partnership"), (Trustee and Partnership are herein collectively referred to as "Borrowers") jointly and severally promise to pay on or before September 30, 1998, to the order of Comerica Bank-Illinois (the "Lender"), an Illinois banking corporation, at its office at 8700 North Waukegan Road, Morton Grove, Illinois 60053, or at such other place as the holder hereof may from time to time designate in writing, the principal sum of One Million Seven Hundred Sixty-Two Thousand Five Hundred Dollars (\$1,762,500) or so much thereof as may be advanced under the Credit Agreement (as hereinafter defined) from time to time (as shown in the records of the Lender).

The unpaid principal amount hereof from time to time outstanding shall bear interest from the date hereof at the following rates per annum: (a) prior to maturity, at a fluctuating rate per annum equal to the sum of (x) one and one-quarter percent (1¼%) plus (y) the Prime Rate (hereinafter defined) from time to time in effect, and (b) after maturity, whether by acceleration or otherwise, until paid, at a fluctuating rate per annum equal to the sum of (x) four percent (4%) plus (y) the Prime Rate from time to time in effect (but not less than the Prime Rate in effect at such maturity). Accrued interest shall be payable on the 1st day of each month and at maturity, beginning with the first of such dates to occur after the date hereof. After maturity, whether by acceleration or otherwise, accrued interest shall be payable on demand. The term "Prime Rate" at any time shall mean the rate of interest then most recently announced by the Lender at Morton Grove, Illinois as its prime rate; and the applicable interest rate under this Note shall change simultaneously with each change in the Prime Rate. Interest shall be computed on the actual number of days elapsed on the basis of a year consisting of 360 days.

Payments of both principal and interest hereunder are to be made in lawful money of the United States of America in immediately available funds.

This Note evidences indebtedness incurred under a certain Credit Agreement, dated as of September 26, 1995, (as the same may be amended from time to time, the "Credit Agreement"), between the Partnership and the Lender and payment hereof is secured by the Related Documents (as such term is defined in the Credit Agreement). Reference is made to the Credit Agreement and the Related Documents for a statement of the prepayment rights and obligations of the Borrowers, the nature and extent of the collateral security and the rights of the parties to the Related Documents in respect of such collateral security and for a statement of the terms and conditions under which the due date of this Note may be accelerated. Upon the occurrence of an Event of Default, as specified in the Credit Agreement, the principal

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balance hereof and the interest accrued hereon may be declared to be forthwith due and payable, and any indebtedness of the holder hereof to the Borrowers may be appropriated and applied thereon.

In addition to, and not in limitation of, the foregoing and the provisions of the Credit Agreement, the Borrowers further agree, subject only to any limitation imposed by applicable law, to pay all expenses, including reasonable attorneys' fees and expenses, incurred by the holder of this Note in endeavoring to collect any amounts payable hereunder which are not paid when due, whether by acceleration or otherwise.

The undersigned represent and agree that the proceeds of this Note will be used for purposes specified in Paragraph 4(1)(c) of Chapter 17, Section 6404 of the Illinois Revised Statutes (1983), and that the indebtedness evidenced hereby constitutes a business loan which comes within the purview of said Paragraph 4(1)(c) and is not usurious.

The Borrowers, for themselves and for their successors and assigns and all guarantors, endorsers and signers, hereby waive all valuation and appraisal privileges, presentment for payment, demand, protest, notice of protest and nonpayment, dishonor and notice of dishonor, bringing of suit, lack of diligence or delays in collection or enforcement of this Note and notice of the intention to accelerate, the release of any party liable, the release of any security for the debt, the taking of any additional security and any other indulgence or forbearance, and all of the foregoing persons are and shall be jointly and severally, directly and primarily, liable for the amount of all sums owing and to be owed hereon, and agree that this Note and any or all payments coming due hereunder may be extended or renewed from time to time without in any way affecting or diminishing their liability hereunder. To the extent permitted by applicable law, Borrowers hereby waive all applicable statutes of limitation.

If any provision of this Note or any payments pursuant to the terms hereof shall be invalid or unenforceable to any extent, the remainder of this Note and any other payments hereunder shall not be affected thereby and shall be enforceable to the greater extent permitted by law.

This Note has been made and delivered at Morton Grove, Illinois, and all funds discharged to or for the benefit of the undersigned will be disbursed in Morton Grove, Illinois, Illinois. This Note is made under and governed by the internal laws of the state of Illinois, without regard to principles of conflicts of law.

This Note shall be binding upon the Borrowers and their respective successors and assigns; provided, however, the Borrowers may not assign their rights hereunder or in connection herewith; and this Note shall inure to the benefit of the Lender and its successors and assigns.

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IN WITNESS WHEREOF, the undersigned have executed and delivered this Note as of the date and year first above written, at Merton Grove, Illinois.

LaSalle National Trust, N.A., as Trustee under Trust Agreement dated February 1, 1986 and known as its Trust No. 110707

By: \_\_\_\_\_  
Its \_\_\_\_\_

Attest: \_\_\_\_\_  
Its \_\_\_\_\_

515 MELROSE ASSOCIATES LIMITED PARTNERSHIP

By: Banner Equities Limited Partnership,  
its general partner

By: Banner Investments, Inc., its general partner

By: \_\_\_\_\_  
Its \_\_\_\_\_ President

1-28-86 (Rev. 1-28-86) (1/86) (1/86)

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## EXHIBIT B

### LEGAL DESCRIPTION:

LOTS 1 AND 2 IN COUNTY CLERK'S DIVISION OF SUB LOTS 3 TO 9 INCLUSIVE AND PART OF LOT 2 IN ASSESSOR'S DIVISION OF LOTS 27 AND 28 IN PINE GROVE, BEING A SUBDIVISION OF SECTION 21, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

P.I.N. 14-21-314-008-0000;  
14-21-314-009-0000.

COMMONLY KNOWN AS: 515 West Melrose, Chicago, Illinois

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