

UNOFFICIAL COPY

DEFINITIONS. The following words shall have the following meanings when used in this Mortgage. Terms not the Personal Property and Rents.

Grantor presently assigns to Lender all of Grantor's right, title, and interest in and to all leases of the Property and all Rents from the Property. In addition, Grantor grants to Lender a Uniform Commercial Code security interest in

The Real Property or its address is commonly known as 4027 North Kedzie, Chicago, IL 60618. The Real Property tax identification number is 13-13-324-002-0000, LOT 44; 13-13-324-003-0000, LOT 43; 13-13-324-004-0000, LOT 42; 13-13-324-005-0000, LOT 41; 13-13-324-006-0000, LOT 40; 13-13-324-007-0000, LOT 39; 13-13-324-008-0000, LOT 38; 13-13-324-009-0000, LOTS 34 THROUGH 37; 13-13-324-010-0000, THE NORTH PART OF LOT 32 AND ALL OF LOT 33; AND 13-13-324-011-0000, THE NORTH PART OF LOT 31 AND THE SOUTH PART OF LOT 32.

THE NORTH 10 FEET OF LOT 31 AND ALL OF LOTS 32 TO 41 BOTH INCLUSIVE, IN BLOCK 2 IN THE SUBDIVISION OF THE WEST 1/2 OF THE SOUTH 1/2 OF THE WEST 1/2 OF THE WEST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 13, TOWNSHIP 40 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

OF THE WEST 1/2 OF THE WEST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 13, TOWNSHIP 40 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, ALSO LOTS 42, 43 AND 44 IN BLOCK 2 IN THE SUBDIVISION OF THE SOUTHWEST 1/4 OF SECTION 13, TOWNSHIP 40 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, INCLUDING WITHOUT LIMITATION all minerals, oil, gas, geothermal and similar matters, located in Cook County, State of Illinois (the "Real Property");

FOR VALUABLE CONSIDERATION, Grantor not personally but as Trustee under the GRANT OF MORTGAGE, dated December 20, 1993 and known as American National Bank and Trust Company Trust Number 117781-07, mortgages and conveys to Lender all of Grantor's right, title, and interest in and to the following described real property, together with all existing or subsequently erected or affixed buildings, improvements and fixtures; all easements, rights of way, and appurtenances; all water, water rights, watercourses and ditch rights (including stock in utilities with ditch or irrigation rights); and all other rights, royalties, and profits relating to the real property, including without limitation all minerals, oil, gas, geothermal and similar matters, located in Cook County, State of Illinois (referred to below as "Lender").

THIS MORTGAGE IS DATED JULY 14, 1996 between American National Bank and Trust Company as Trustee under Trust Number 117781-07 dated December 20, 1993, whose address is 33 North LaSalle Street, Chicago, IL 60690 (referred to below as "Grantor"); and Associated Bank, whose address is 200 East Randolph Drive, Chicago, IL 60601 (referred to below as "Lender").

MORTGAGE

This Mortgage prepared by: Associated Bank
200 E. Randolph Drive
Chicago, IL 60601

FOR RECORDER'S USE ONLY

WHEN RECORDED MAIL TO:
Associated Bank
200 East Randolph Drive
Chicago, IL 60601
Attn: Robert A. Moore
Vice President

| | |
|---|---------|
| F | 301527A |
| P | — |
| P | — |
| T | 37520V |
| L | 174014 |

DEPT-03 RECORDING 95740114
145555 TRAM 0139 10/30/95 14:03:00
439.50
#3034 4 JU * -95-740414
COOK COUNTY RECORDER

95740114

RECORDED

UNOFFICIAL COPY

07-14-1995

MORTGAGE (Continued)

Page 2

otherwise defined in this Mortgage shall have the meanings attributed to such terms in the Uniform Commercial Code. All references to dollar amounts shall mean amounts in lawful money of the United States of America.

Borrower. The word "Borrower" means each and every person or entity signing the Note, including without limitation Village Discount Outlet, Inc., Village Economy Stores, Inc. and Village Thrift Stores, Inc.

Existing Indebtedness. The words "Existing Indebtedness" mean the indebtedness described below in the Existing Indebtedness section of this Mortgage.

Grantor. The word "Grantor" means American National Bank and Trust Company, Trustee under that certain Trust Agreement dated December 20, 1993 and known as American National Bank and Trust Company Trust Number 117781-07. The Grantor is the mortgagor under this Mortgage.

Guarantor. The word "Guarantor" means and includes without limitation each and all of the guarantors, sureties, and accommodation parties in connection with the Indebtedness.

Improvements. The word "Improvements" means and includes without limitation all existing and future improvements, fixtures, buildings, structures, mobile homes affixed on the Real Property, facilities, additions, replacements and other construction on the Real Property.

Indebtedness. The word "Indebtedness" means all principal and interest payable under the Note and any amounts expended or advanced by Lender to discharge obligations of Grantor or expenses incurred by Lender to enforce obligations of Grantor under this Mortgage, together with interest on such amounts as provided in this Mortgage. At no time shall the principal amount of indebtedness secured by the Mortgage, not including sums advanced to protect the security of the Mortgage, exceed \$1,000,000.00.

Lender. The word "Lender" means Associated Bank, its successors and assigns. The Lender is the mortgagee under this Mortgage.

Mortgage. The word "Mortgage" means this Mortgage between Grantor and Lender, and includes without limitation all assignments and security interest provisions relating to the Personal Property and Rents.

Note. The word "Note" means Standby Letter of Credit, Number 10285 dated July 14, 1995 to Village Discount Outlet, Inc., Illinois. The maturity date of this Mortgage is July 15, 1996. **NOTICE TO GRANTOR: THE NOTE CONTAINS A VARIABLE INTEREST RATE.**

Personal Property. The words "Personal Property" mean all equipment, fixtures, and other articles of personal property now or hereafter owned by Grantor, and now or hereafter attached or affixed to the Real Property; together with all accessions, parts, and additions to, all replacements of, and all substitutions for, any of such property; and together with all proceeds (including without limitation all insurance proceeds and refunds of premiums) from any sale or other disposition of the Property.

Property. The word "Property" means collectively the Real Property and the Personal Property.

Real Property. The words "Real Property" mean the property, interests and rights described above in the "Grant of Mortgage" section.

Related Documents. The words "Related Documents" mean and include without limitation all promissory notes, credit agreements, loan agreements, environmental agreements, guarantees, security agreements, mortgages, deeds of trust, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Indebtedness.

Rents. The word "Rents" means all present and future rents, revenues, income, issues, royalties, profits, and other benefits derived from the Property.

THIS MORTGAGE, INCLUDING THE ASSIGNMENT OF RENTS AND THE SECURITY INTEREST IN THE RENTS AND PERSONAL PROPERTY, IS GIVEN TO SECURE (1) PAYMENT OF THE INDEBTEDNESS AND (2) PERFORMANCE OF ALL OBLIGATIONS OF GRANTOR UNDER THIS MORTGAGE AND THE RELATED DOCUMENTS. THIS MORTGAGE IS INTENDED TO AND SHALL BE VALID AND HAVE PRIORITY OVER ALL SUBSEQUENT LIENS AND ENCUMBRANCES, INCLUDING STATUTORY LIENS, EXCEPTING SOLELY TAXES AND ASSESSMENTS LEVIED ON THE REAL PROPERTY, TO THE EXTENT OF THE MAXIMUM AMOUNT SECURED HEREBY. THIS MORTGAGE IS GIVEN AND ACCEPTED ON THE FOLLOWING TERMS:

GRANTOR'S WAIVERS. Grantor waives all rights or defenses arising by reason of any "one action" or "anti-deficiency" law, or any other law which may prevent Lender from bringing any action against Grantor, including a claim for deficiency to the extent Lender is otherwise entitled to a claim for deficiency, before or after Lender's commencement or completion of any foreclosure action, either judicially or by exercise of a power of sale.

GRANTOR'S REPRESENTATIONS AND WARRANTIES. Grantor warrants that: (a) this Mortgage is executed at Borrower's request and not at the request of Lender; (b) Grantor has the full power and right to enter into this Mortgage and to hypothecate the Property; (c) Grantor has established adequate means of obtaining from

95740411

UNOFFICIAL COPY

Property are reasonably necessary to protect and preserve the Property.

Duty to Protect. Grantor agrees neither to abandon nor leave unattended the Property. Grantor shall do all other acts, in addition to those acts set forth above in this section, which from the character and use of the

security or a surety bond, reasonably satisfactory to Lender, to protect Lender's interest.

Compliance with Governmental Requirements. Grantor shall promptly comply with all laws, ordinances, and

regulations, now or hereafter in effect, of all governmental authorities applicable to the use or occupancy of the

Property, including without limitation, the Americans With Disabilities Act. Grantor may contest in good faith

any such law, ordinance, or regulation and withhold compliance during any proceeding, including appropriate

appeals, so long as Grantor has notified Lender in writing prior to doing so and so long as, in Lender's sole

opinion, Lender's interests in the Property are not jeopardized. Lender may require Grantor to post adequate

removal of improvements. Grantor shall not demolish or remove any improvements on the Real Property

without the prior written consent of Lender. As a condition to the removal of any improvements, Lender may

require Grantor to make arrangements satisfactory to Lender to replace such improvements with

improvements of at least equal value.

Lender's Right to Enter. Lender and its agents and representatives may enter upon the Real Property at all

reasonable times to attend to Lender's interests and to inspect the Property for purposes of Grantor's

compliance with the terms and conditions of this Mortgage.

Nuisance, Waste. Grantor shall not cause, conduct or permit any nuisance not to commit, permit, or suffer any

stripping of or waste on or to the Property or any portion of the Property. Without limiting the generality of the

foregoing, Grantor will not remove, or grant to any other party the right to remove, any timber, minerals

(including oil and gas), soil, gravel or rock products without the prior written consent of Lender.

Removal of Improvements. Grantor shall not demolish or remove any improvements on the Real Property

without the prior written consent of Lender. As a condition to the removal of any improvements, Lender may

require Grantor to make arrangements satisfactory to Lender to replace such improvements with

improvements of at least equal value.

including the obligation to indemnify, shall survive the payment of the indebtedness and the satisfaction and

recourse of the lien of this Mortgage and shall not be affected by Lender's acquisition of any interest in

the Property, whether by foreclosure or otherwise.

substances. Grantor hereby (a) releases and waives any future claims against Lender for indemnity or

contribution in the event Grantor becomes liable for cleanup or other costs under any such laws, and (b)

agrees to indemnify and hold harmless Lender against any and all claims, losses, liabilities, damages,

penalties, and expenses which Lender may directly or indirectly sustain or suffer resulting from a breach of

this section of the Mortgage or as a consequence of any use, generation, manufacture, storage, disposal,

release or threatened release occurring prior to Grantor's ownership of interest in the Property, whether or not

the same was or should have been known to Grantor. The provisions of this section of the Mortgage,

including the obligation to indemnify, shall survive the payment of the indebtedness and the satisfaction and

recourse of the lien of this Mortgage and shall not be affected by Lender's acquisition of any interest in

the Property, whether by foreclosure or otherwise.

Property to make such inspections and tests, at Grantor's expense, as Lender may deem appropriate to

determine compliance of the Property with this section of the Mortgage. Any inspections or tests made by

Lender shall be for Lender's purposes only and shall not be construed to create any responsibility or liability

on the part of Lender or to any other person. The representations and warranties contained herein

are based on Grantor's due diligence in investigating the Property for hazardous waste and hazardous

substances. Grantor hereby (a) releases and waives any future claims against Lender for indemnity or

contribution in the event Grantor becomes liable for cleanup or other costs under any such laws, and (b)

agrees to indemnify and hold harmless Lender against any and all claims, losses, liabilities, damages,

penalties, and expenses which Lender may directly or indirectly sustain or suffer resulting from a breach of

this section of the Mortgage or as a consequence of any use, generation, manufacture, storage, disposal,

release or threatened release occurring prior to Grantor's ownership of interest in the Property, whether or not

the same was or should have been known to Grantor. The provisions of this section of the Mortgage,

including the obligation to indemnify, shall survive the payment of the indebtedness and the satisfaction and

recourse of the lien of this Mortgage and shall not be affected by Lender's acquisition of any interest in

the Property, whether by foreclosure or otherwise.

shall use, generate, manufacture, store, treat, dispose of, or release any hazardous waste or substance on,

under, about or from the Property and (ii) any such activity shall be conducted in compliance with all

applicable federal, state, and local laws, regulations and ordinances, including without limitation those laws,

regulations, and ordinances described above. Grantor authorizes Lender and its agents to enter upon the

Property to make such inspections and tests, at Grantor's expense, as Lender may deem appropriate to

POSSESSION AND MAINTENANCE OF THE PROPERTY. Grantor and Borrower agree that Grantor's possession

and use of the Property shall be governed by the following provisions:

manage the Property and collect the Rents from the Property.

Duty to Maintain. Grantor shall maintain the Property in tenable condition and promptly perform all repairs,

replacements, and maintenance necessary to preserve its value.

Hazardous Substances. The terms "hazardous waste," "hazardous substance," "release," and

"threatened release" as used in this Mortgage shall have the same meanings as set forth in the

Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C.

Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No.

99-499 (SARA), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource

Conservation and Recovery Act, 49 U.S.C. Section 6901, et seq., or other applicable state or Federal laws,

rules, or regulations adopted pursuant to any of the foregoing. The terms "hazardous waste" and "hazardous

substance" shall also include, without limitation, petroleum and petroleum by-products or any fraction thereof

and asbestos. Grantor represents and warrants to Lender that: (a) During the period of Grantor's ownership

of the Property, there has been no use, generation, manufacture, storage, treatment, disposal, release or

threatened release of any hazardous waste or substance by any person on, under, about or from the Property;

(b) Grantor has no knowledge of, or reason to believe that there has been, except as previously disclosed to

and acknowledged by Lender in writing, (i) any use, generation, manufacture, storage, treatment, disposal,

release, or threatened release of any hazardous waste or substance on, under, about or from the Property by

any prior owners or occupants of the Property or (ii) any actual or threatened litigation or claims of any kind

by any person relating to such matters; and (c) Except as previously disclosed to and acknowledged by

Lender in writing, (i) neither Grantor nor any tenant, contractor, agent or other authorized user of the Property

shall use, generate, manufacture, store, treat, dispose of, or release any hazardous waste or substance on,

under, about or from the Property and (ii) any such activity shall be conducted in compliance with all

applicable federal, state, and local laws, regulations and ordinances, including without limitation those laws,

9574011

41407559

UNOFFICIAL COPY

07-14-1995

MORTGAGE (Continued)

Page 4

DUE ON SALE - CONSENT BY LENDER. Lender may, at its option, declare immediately due and payable all sums secured by this Mortgage upon the sale or transfer, without the Lender's prior written consent, of all or any part of the Real Property, or any interest in the Real Property. A "sale or transfer" means the conveyance of Real Property or any right, title or interest therein; whether legal, beneficial or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold interest with a term greater than three (3) years, lease-option contract, or by sale, assignment, or transfer of any beneficial interest in or to any land trust holding title to the Real Property, or by any other method of conveyance of Real Property interest. If any Grantor is a corporation, partnership or limited liability company, transfer also includes any change in ownership of more than twenty-five percent (25%) of the voting stock, partnership interests or limited liability company interests, as the case may be, of Grantor. However, this option shall not be exercised by Lender if such exercise is prohibited by federal law or by Illinois law.

TAXES AND LIENS. The following provisions relating to the taxes and liens on the Property are a part of this Mortgage.

Payment. Grantor shall pay when due (and in all events prior to delinquency) all taxes, payroll taxes, special taxes, assessments, water charges and sewer service charges levied against or on account of the Property, and shall pay when due all claims for work done on or for services rendered or material furnished to the Property. Grantor shall maintain the Property free of all liens having priority over or equal to the interest of Lender under this Mortgage, except for the lien of taxes and assessments not due, except for the Existing indebtedness referred to below, and except as otherwise provided in the following paragraph.

Right To Contest. Grantor may withhold payment of any tax, assessment, or claim in connection with a good faith dispute over the obligation to pay, so long as Lender's interest in the Property is not jeopardized. If a lien arises or is filed as a result of nonpayment, Grantor shall within fifteen (15) days after the lien arises or, if a lien is filed, within fifteen (15) days after Grantor has notice of the filing, secure the discharge of the lien, or if requested by Lender, deposit with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender in an amount sufficient to discharge the lien plus any costs and attorneys' fees or other charges that could accrue as a result of a foreclosure or sale under the lien. In any contest, Grantor shall defend itself and Lender and shall satisfy any adverse judgment before enforcement against the Property. Grantor shall name Lender as an additional obligee under any surety bond furnished in the contest proceedings.

Evidence of Payment. Grantor shall upon demand furnish to Lender satisfactory evidence of payment of the taxes or assessments and shall authorize the appropriate governmental official to deliver to Lender at any time a written statement of the taxes and assessments against the Property.

Notice of Construction. Grantor shall notify Lender at least fifteen (15) days before any work is commenced, any services are furnished, or any materials are supplied to the Property, if any mechanic's lien, materialmen's lien, or other lien could be asserted on account of the work, services, or materials. Grantor will upon request of Lender furnish to Lender advance assurances satisfactory to Lender that Grantor can and will pay the cost of such improvements.

PROPERTY DAMAGE INSURANCE. The following provisions relating to insuring the Property are a part of this Mortgage.

Maintenance of Insurance. Grantor shall procure and maintain policies of fire insurance with standard extended coverage endorsements on a replacement basis for the full insurable value covering all improvements on the Real Property in an amount sufficient to avoid application of any coinsurance clause, and with a standard mortgagee clause in favor of Lender. Grantor shall also procure and maintain comprehensive general liability insurance in such coverage amounts as Lender may request with Lender being named as additional insureds in such liability insurance policies. Additionally, Grantor shall maintain such other insurance, including but not limited to hazard, business interruption and boiler insurance as Lender may require. Policies shall be written by such insurance companies and in such form as may be reasonably acceptable to Lender. Grantor shall deliver to Lender certificates of coverage from each insurer containing a stipulation that coverage will not be cancelled or diminished without a minimum of ten (10) days' prior written notice to Lender and not containing any disclaimer of the insurer's liability for failure to give such notice. Each insurance policy also shall include an endorsement providing that coverage in favor of Lender will not be impaired in any way by any act, omission or default of Grantor or any other person. Should the Real Property at any time become located in an area designated by the Director of the Federal Emergency Management Agency as a special flood hazard area, Grantor agrees to obtain and maintain Federal Flood Insurance, to the extent such insurance is required by Lender and is or becomes available, for the term of the loan and for the full unpaid principal balance of the loan, or the maximum limit of coverage that is available, whichever is less.

Application of Proceeds. Grantor shall promptly notify Lender of any loss or damage to the Property. Lender may make proof of loss if Grantor fails to do so within fifteen (15) days of the casualty. Whether or not Lender's security is impaired, Lender may, at its election, apply the proceeds to the reduction of the indebtedness, payment of any lien affecting the Property, or the restoration and repair of the Property. If Lender elects to apply the proceeds to restoration and repair, Grantor shall repair or replace the damaged or destroyed improvements in a manner satisfactory to Lender. Lender shall, upon satisfactory proof of such expenditure, pay or reimburse Grantor from the proceeds for the reasonable cost of repair or restoration if Grantor is not in default hereunder. Any proceeds which have not been disbursed within 180 days after their receipt and which Lender has not committed to the repair or restoration of the Property shall be used first to pay any amount owing to Lender under this Mortgage, then to prepay accrued interest, and the remainder, if any, shall be applied to the principal balance of the indebtedness. If Lender holds any proceeds after

UNOFFICIAL COPY

07-14-1995

MORTGAGE (Continued)

Page 6

Grantor shall promptly take such steps as may be necessary to defend the action and obtain the award. Grantor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of its own choice, and Grantor will deliver or cause to be delivered to Lender such instruments as may be requested by it from time to time to permit such participation.

IMPOSITION OF TAXES, FEES AND CHARGES BY GOVERNMENTAL AUTHORITIES. The following provisions relating to governmental taxes, fees and charges are a part of this Mortgage:

Current Taxes, Fees and Charges. Upon request by Lender, Grantor shall execute such documents in addition to this Mortgage and take whatever other action is requested by Lender to perfect and continue Lender's lien on the Real Property. Grantor shall reimburse Lender for all taxes, as described below, together with all expenses incurred in recording, perfecting or continuing this Mortgage, including without limitation all taxes, fees, documentary stamps, and other charges for recording or registering this Mortgage.

Taxes. The following shall constitute taxes to which this section applies: (a) a specific tax upon this type of Mortgage or upon all or any part of the indebtedness secured by this Mortgage; (b) a specific tax on Borrower which Borrower is authorized or required to deduct from payments on the indebtedness secured by this type of Mortgage; (c) a tax on this type of Mortgage chargeable against the Lender or the holder of the Note; and (d) a specific tax on all or any portion of the indebtedness or on payments of principal and interest made by Borrower.

Subsequent Taxes. If any tax to which this section applies is enacted subsequent to the date of this Mortgage, this event shall have the same effect as an Event of Default (as defined below), and Lender may exercise any or all of its available remedies for an Event of Default as provided below unless Grantor either (a) pays the tax before it becomes delinquent, or (b) contests the tax as provided above in the Taxes and Liens section and deposits with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender.

SECURITY AGREEMENT; FINANCING STATEMENTS. The following provisions relating to this Mortgage as a security agreement are a part of this Mortgage.

Security Agreement. This instrument shall constitute a security agreement to the extent any of the Property constitutes fixtures or other personal property, and Lender shall have all of the rights of a secured party under the Uniform Commercial Code as amended from time to time.

Security Interest. Upon request by Lender, Grantor shall execute financing statements and take whatever other action is requested by Lender to perfect and continue Lender's security interest in the Rents and Personal Property. In addition to recording this Mortgage in the real property records, Lender may, at any time and without further authorization from Grantor, file executed counterparts, copies or reproductions of this Mortgage as a financing statement. Grantor shall reimburse Lender for all expenses incurred in perfecting or continuing this security interest. Upon default, Grantor shall assemble the Personal Property in a manner and at a place reasonably convenient to Grantor and Lender and make it available to Lender within three (3) days after receipt of written demand from Lender.

Addresses. The mailing addresses of Grantor (debtor) and Lender (secured party), from which information concerning the security interest granted by this Mortgage may be obtained (each as required by the Uniform Commercial Code), are as stated on the first page of this Mortgage.

FURTHER ASSURANCES; ATTORNEY-IN-FACT. The following provisions relating to further assurances and attorney-in-fact are a part of this Mortgage.

Further Assurances. At any time, and from time to time, upon request of Lender, Grantor will make, execute and deliver, or will cause to be made, executed or delivered, to Lender or to Lender's designee, and when requested by Lender, cause to be filed, recorded, refiled, or rerecorded, as the case may be, at such times and in such offices and places as Lender may deem appropriate, any and all such mortgages, deeds of trust, security deeds, security agreements, financing statements, continuation statements, instruments of further assurance, certificates, and other documents as may, in the sole opinion of Lender, be necessary or desirable in order to effectuate, complete, perfect, continue, or preserve (a) the obligations of Grantor and Borrower under the Note, this Mortgage, and the Related Documents, and (b) the liens and security interests created by this Mortgage on the Property, whether now owned or hereafter acquired by Grantor. Unless prohibited by law or agreed to the contrary by Lender in writing, Grantor shall reimburse Lender for all costs and expenses incurred in connection with the matters referred to in this paragraph.

Attorney-in-Fact. If Grantor fails to do any of the things referred to in the preceding paragraph, Lender may do so for and in the name of Grantor and at Grantor's expense. For such purposes, Grantor hereby irrevocably appoints Lender as Grantor's attorney-in-fact for the purpose of making, executing, delivering, filing, recording, and doing all other things as may be necessary or desirable, in Lender's sole opinion, to accomplish the matters referred to in the preceding paragraph.

FULL PERFORMANCE. If Borrower pays all the indebtedness when due, and otherwise performs all the obligations imposed upon Grantor under this Mortgage, Lender shall execute and deliver to Grantor a suitable satisfaction of this Mortgage and suitable statements of termination of any financing statement on file evidencing Lender's security interest in the Rents and the Personal Property. Grantor will pay, if permitted by applicable law, any reasonable termination fee as determined by Lender from time to time. If, however, payment is made by Borrower, whether voluntarily or otherwise, or by guarantor or by any third party, on the indebtedness and thereafter Lender is forced to remit the amount of that payment (a) to Borrower's trustee in bankruptcy or to any similar person under any federal or state bankruptcy law or law for the relief of debtors, (b) by reason of any judgment, decree or order of any court or administrative body having jurisdiction over Lender or any of Lender's property, or (c) by reason of any settlement or compromise of any claim made by Lender with any claimant (including

95740114

UNOFFICIAL COPY

payment in full of the indebtedness, such proceeds shall be paid to Grantor.

Unexpired Insurance at Sale. Any unexpired insurance shall inure to the benefit of, and pass to, the purchaser of this Mortgage at any trustee's sale or other sale held under the provisions of this Mortgage, or at any foreclosure sale of such Property.

Compliance with Existing Indebtedness. During the period in which any Existing Indebtedness described below is in effect, compliance with the insurance provisions contained in the instrument evidencing such Existing Indebtedness shall constitute compliance with the insurance provisions under this Mortgage, to the extent compliance with the terms of this Mortgage would constitute a duplication of insurance requirement. If any proceeds from the insurance become payable on loss, the provisions in this Mortgage for division of proceeds shall apply only to that portion of the proceeds not payable to the holder of the Existing Indebtedness.

Grantor's Report on Insurance. Upon request of Lender, however not more than once a year, Grantor shall furnish to Lender a report on each existing policy of insurance showing: (a) the name of the insurer; (b) the risks insured; (c) the amount of the policy; (d) the property insured, the then current replacement value of such property, and the manner of determining that value; and (e) the expiration date of the policy. Grantor shall, upon request of Lender, have an independent appraiser satisfactory to Lender determine the cash value replacement cost of the Property.

EXPENDITURES BY LENDER. If Grantor fails to comply with any provision of this Mortgage, including any obligation to maintain Existing Indebtedness in good standing as required below, or if any action or proceeding is commenced that would materially affect Lender's interests in the Property, Lender on Grantor's behalf may, but shall not be required to, take any action that Lender deems appropriate. Any amount that Lender expends in so doing will bear interest at the rate charged under the Note from the date incurred or paid by Lender to the date of repayment by Grantor. All such expenses, at Lender's option, will: (a) be payable on demand, (b) be added to the balance of the Note and be apportioned among and be payable with any installment payments to become due during either (i) the term of any applicable insurance policy or (ii) the remaining term of the Note, or (c) be treated as a balloon payment which will be due and payable at the Note's maturity. This Mortgage also will secure payment of these amounts. The rights provided for in this paragraph shall be in addition to any other rights or any remedies to which Lender may be entitled on account of the default. Any such action by Lender shall not be construed as curing the default so as to bar Lender from any remedy that it otherwise would have had.

WARRANTY; DEFENSE OF TITLE. The following provisions relating to ownership of the Property are a part of this Mortgage:

Title. Grantor warrants that: (a) Grantor holds good and marketable title of record to the Property in fee simple, free and clear of all liens and encumbrances other than those set forth in the Real Property description or in the Existing Indebtedness section below or in any title insurance policy, title report, or final title opinion issued in favor of, and accepted by, Lender in connection with this Mortgage, and (b) Grantor has the full right, power, and authority to execute and deliver this Mortgage to Lender.

Defense of Title. Subject to the exception in the paragraph above, Grantor warrants and will forever defend the title to the Property against the lawful claims of all persons. In the event any action or proceeding is commenced that questions Grantor's title or the interest of Lender under this Mortgage, Grantor shall defend the action at Grantor's expense. Grantor may be the normal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of Lender's own choice, and Grantor will deliver, or cause to be delivered, to Lender such instruments as Lender may request from time to time to permit such participation.

Compliance with Laws. Grantor warrants that the Property and Grantor's use of the Property complies with all existing applicable laws, ordinances, and regulations of governmental authorities.

EXISTING INDEBTEDNESS. The following provisions concerning Existing Indebtedness (the "Existing Indebtedness") are a part of this Mortgage:

Existing Lien. The lien of this Mortgage securing the indebtedness may be secondary and inferior to an existing lien. Grantor expressly covenants and agrees to pay, or see to the payment of, the Existing Indebtedness and to prevent any default on such indebtedness, any default under the instruments evidencing such indebtedness, or any default under any security documents for such indebtedness.

Default. If the payment of any installment of principal or any interest on the Existing Indebtedness is not made within the time required by the note evidencing such indebtedness, or should a default occur under the instrument securing such indebtedness and not be cured during any applicable grace period therein, then, at the option of Lender, the indebtedness secured by this Mortgage shall become immediately due and payable, and this Mortgage shall be in default.

No Modification. Grantor shall not enter into any agreement with the holder of any mortgage, deed of trust, or other security agreement which has priority over this Mortgage by which that agreement is modified, amended, extended, or renewed without the prior written consent of Lender. Grantor shall neither request nor accept any future advances under any such security agreement without the prior written consent of Lender.

CONDEMNATION. The following provisions relating to condemnation of the Property are a part of this Mortgage:

Application of Net Proceeds. If all or any part of the Property is condemned by eminent domain proceedings or by any proceeding or purchase in lieu of condemnation, Lender may at its election require that all or any portion of the net proceeds of the award be applied to the indebtedness or the repair or restoration of the Property. The net proceeds of the award shall mean the award after payment of all reasonable costs, expenses, and attorney's fees incurred by Lender in connection with the condemnation.

Proceedings. If any proceeding in condemnation is filed, Grantor shall promptly notify Lender in writing, and

95240414

UNOFFICIAL COPY

07-14-1995

MORTGAGE (Continued)

Page 8

mortgagee in possession or receiver may serve without bond if permitted by law. Lender's right to the appointment of a receiver shall exist whether or not the apparent value of the Property exceeds the indebtedness by a substantial amount. Employment by Lender shall not disqualify a person from serving as a receiver.

Judicial Foreclosure. Lender may obtain a judicial decree foreclosing Grantor's interest in all or any part of the Property.

Deficiency Judgment. If permitted by applicable law, Lender may obtain a judgment for any deficiency remaining in the indebtedness due to Lender after application of all amounts received from the exercise of the rights provided in this section.

Other Remedies. Lender shall have all other rights and remedies provided in this Mortgage or the Note or available at law or in equity.

Sale of the Property. To the extent permitted by applicable law, Grantor or Borrower hereby waive any and all right to have the property marshalled. In exercising its rights and remedies, Lender shall be free to sell all or any part of the Property together or separately, in one sale or by separate sales. Lender shall be entitled to bid at any public sale on all or any portion of the Property.

Notice of Sale. Lender shall give Grantor reasonable notice of the time and place of any public sale of the Personal Property of the time after which any private sale or other intended disposition of the Personal Property is to be made. Reasonable notice shall mean notice given at least ten (10) days before the time of the sale or disposition.

Waiver; Election of Remedies. A waiver by any party of a breach of a provision of this Mortgage shall not constitute a waiver of or prejudice the party's rights otherwise to demand strict compliance with that provision or any other provision. Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or take action to perform an obligation of Grantor or Borrower under this Mortgage after failure of Grantor or Borrower to perform shall not affect Lender's right to declare a default and exercise its remedies under this Mortgage.

Attorneys' Fees; Expenses. If Lender institutes any suit or action to enforce any of the terms of this Mortgage, Lender shall be entitled to recover such sum as the court may adjudge reasonable as attorneys' fees at trial and on any appeal. Whether or not any court action is involved, all reasonable expenses incurred by Lender that in Lender's opinion are necessary at any time for the protection of its interest or the enforcement of its rights shall become a part of the indebtedness payable on demand and shall bear interest from the date of expenditure until repaid at the rate provided for in the Note. Expenses covered by this paragraph include, without limitation, however subject to any limits under applicable law, Lender's attorneys' fees and Lender's legal expenses whether or not there is a lawsuit, including attorneys' fees for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals and any anticipated post-judgment collection services, the cost of searching records, obtaining title reports (including foreclosure reports), surveyors' reports, and appraisal fees and title insurance, to the extent permitted by applicable law. Borrower also will pay any court costs, in addition to all other sums provided by law.

NOTICES TO GRANTOR AND OTHER PARTIES. Any notice under this Mortgage, including without limitation any notice of default and any notice of sale to Grantor, shall be in writing, may be sent by telefacsimile, and shall be effective when actually delivered, or when deposited with a nationally recognized overnight courier, or, if mailed, shall be deemed effective when deposited in the United States mail first class, registered mail, postage prepaid, directed to the addresses shown near the beginning of this Mortgage. Any party may change its address for notices under this Mortgage by giving formal written notice to the other parties specifying that the purpose of the notice is to change the party's address. All copies of notices of foreclosure from the holder of any lien which has priority over this Mortgage shall be sent to Lender's address, as shown near the beginning of this Mortgage. For notice purposes, Grantor agrees to keep Lender informed at all times of Grantor's current address.

MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of this Mortgage:

Amendments. This Mortgage, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Mortgage. No alteration or amendment to this Mortgage shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

Annual Reports. If the Property is used for purposes other than Grantor's residence, Grantor shall furnish to Lender, upon request, a certified statement of net operating income received from the Property during Grantor's previous fiscal year in such form and detail as Lender shall require. "Net operating income" shall mean all cash receipts from the Property less all cash expenditures made in connection with the operation of the Property.

Applicable Law. This Mortgage has been delivered to Lender and accepted by Lender in the State of Illinois. This Mortgage shall be governed by and construed in accordance with the laws of the State of Illinois.

Caption Headings. Caption headings in this Mortgage are for convenience purposes only and are not to be used to interpret or define the provisions of this Mortgage.

Merger. There shall be no merger of the interest or estate created by this Mortgage with any other interest or estate in the Property at any time held by or for the benefit of Lender in any capacity, without the written consent of Lender.

Multiple Parties; Corporate Authority. All obligations of Grantor and Borrower under this Mortgage shall be joint and several, and all references to Grantor shall mean each and every Grantor, and all references to

93710114

UNOFFICIAL COPY

07-14-1995

MORTGAGE
(Continued)

Page 10

CORPORATE ACKNOWLEDGMENT

STATE OF ILLINOIS)

) ss

COUNTY OF COOK)

On this 23RD day of OCT, 19 95, before me, the undersigned Notary Public, personally appeared Trust Officer and Trust Officer, of American National Bank and Trust Company as Trustees under Trust Number 117701-07 dated December 20, 1993, and known to me to be authorized agents of the corporation that executed the Mortgage and acknowledged the Mortgage to be the free and voluntary act and deed of the corporation, by authority of its Bylaws or by resolution of its board of directors, for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute this Mortgage and in fact executed the Mortgage on behalf of the corporation.

American National Bank and Trust Company of Chicago

By Annette G. Flood

Residing at _____

Notary Public in and for the State of ILLINOIS

My commission expires _____



LASER PRO, Reg. U.S. Pat. & T.M. Off., Ver. 3.20 (c) 1985 CFI ProServices, Inc. All rights reserved.
[IL-G03 VILLGLOC.LN C8.OVL]

COOK County Clerk's Office
855/458

