

UNOFFICIAL COPY

This Document Prepared By
and After Recording Return To:

95841167

Cynthia Jared, Esq.
Sachnoff and Weaver, Ltd.
30 South Wacker Drive
Suite 2900
Chicago, Illinois 60606

F	105.30	AD
P	—	P
T	105.50	W
I	M	

Common Address:

111 North Northwest Avenue
Northlake, Illinois 60164

95841167

95841167

**AMENDED AND RESTATED MORTGAGE, ASSIGNMENT
OF LEASES AND RENTS, SECURITY AGREEMENT and
FINANCING STATEMENT - LA FRANCAISE BAKERY, INC.**

THIS AMENDED AND RESTATED MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT and FINANCING STATEMENT (herein sometimes called "**Mortgage**") is made effective as of September 15, 1995, by American National Bank and Trust Company of Chicago, not personally, but solely as Trustee under Trust Agreement dated September 1, 1991 and known as Trust No. 174488-00 ("**Trustee**"), having its principal office at 33 North LaSalle Street, Chicago, Illinois 60690 and La Francaise Bakery, Inc. ("**Beneficiary**"), as mortgagor, in favor of American National Bank and Trust Company of Chicago located at 33 North LaSalle Street, Chicago, Illinois 60690 ("**Lender**"), as mortgagee. Trustee and Beneficiary are sometimes collectively referred to herein as ("**Borrower**").

95841167

DEPT. OF RECORDING 1105.50
748555 TRAN 2793 12/04/95 15:54:00
47275 451 *-95-841167
COOK COUNTY RECORDER

RECITALS:

A. **Loan.** Trustee is the fee title owner of the land described on Exhibit A attached hereto, together with all improvements thereon. Beneficiary is the sole beneficiary of and has sole power of direction under the trust agreement creating Trustee. Lender has agreed to lend to Borrower an aggregate amount equal to \$8,514,531.96 or such other sum as may be reflected on Exhibit B, as amended from time to time (the "**Loan**") pursuant to the terms and conditions set forth in that certain Amended and Restated Loan and Security Agreement dated as of September 15, 1995 (the "**Loan Agreement**").

B. **Notes.** To evidence certain obligations of Borrower to Lender, Borrower has executed and delivered to Lender certain promissory notes described on Exhibit B,

UNOFFICIAL COPY

attached hereto and made a part hereof (collectively referred to herein as the "Notes" and individually as a "Note"). The Notes are hereby incorporated herein by reference as if fully set forth herein. Each Note is payable to Lender at the address set forth above.

C. Mortgage. The Loan is further secured by that certain mortgage, assignment of leases and rents, security agreement and financing statement recorded in the Cook County Recorder's Office, September 23, 1991 as Document No. 91491304, as amended (the "Original Mortgage"). This Mortgage amends and restates in its entirety the Original Mortgage.

D. Loan Documents. To evidence and secure the obligations and liabilities of Borrower to Lender in connection with the Loan, Borrower has executed and delivered to Lender the Loan Agreement, Notes and this Mortgage. Borrower has also executed various other security agreements, assignments, certificates and indemnities relating to the obligations evidenced by the Notes. The Notes, this Mortgage, together with all such agreements, loan agreements, security agreements, assignments, certificates, indemnifications, documents, notes, guarantees, pledges, consents, contracts, notices, financing statements, hypothecation agreements, collateral assignments, mortgages, chattel mortgages, and instruments given to evidence or secure the indebtedness evidenced by the Notes and all other written matter and all amendments, modifications, supplements, extensions and restatements thereof and thereto, and all agreements, notes, documents or instruments delivered in substitution therefor or in lieu thereof, whether heretofore, now or hereafter executed by or on behalf of Borrower, any party who or which has guaranteed all or any portion of the indebtedness evidenced by the Notes (collectively a "Guarantor"), any one or more of them, or any other person or entity, delivered to Lender or any participant with respect to the Loan are collectively referred to herein as the "Loan Documents."

E. The Liabilities. As used in this Mortgage, the term "Liabilities" means and includes all of the following:

(i) The principal of and interest on the Notes, all indebtedness of any kind arising under, and all amounts of any kind which at any time become due or owing to the Lender under or with respect to this Mortgage or any of the other Loan Documents;

(ii) all of the covenants, obligations and agreements of Borrower in, under or pursuant to the Notes;

(iii) all of the covenants, obligations and agreements of Borrower and Beneficiary in, under or pursuant to this Mortgage and all of the other Loan Documents; and all advances, costs or expenses paid or incurred by the Lender to protect any or all of the Collateral (as defined in the Loan Agreement, which definition is hereby incorporated herein by reference);

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

(iv) perform any obligation of Borrower hereunder or Borrower under any of the other Loan Documents or collect any amount owing to the Lender which is secured hereby;

(v) any and all other liabilities, obligations and indebtedness, howsoever created, arising or evidenced, direct or indirect, absolute or contingent, recourse or nonrecourse, now or hereafter existing or due or to become due, owing by Borrower to the Lender (provided, however, that the maximum amount included within the Liabilities on account of principal shall not exceed the sum of an amount equal to two times the original principal amount of the Notes plus the total amount of all advances made by the Lender from time to time to protect the Collateral and the security interest and lien created hereby);

(vi) interest on all of the foregoing; and all costs of enforcement and collection of this Mortgage and the other Loan Documents, if any, and the Liabilities.

GRANT

NOW THEREFORE, for and in consideration of Lender's making the proceeds of the loan available to Borrower and any other financial accommodation to or for the benefit of Borrower, consideration of the various agreements contained herein and in the other Loan Documents, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Borrower, and in order to secure the full, timely and proper payment and performance of each and every one of the Liabilities,

BORROWER HEREBY MORTGAGES, CONVEYS, TRANSFERS AND ASSIGNS TO LENDER AND ITS SUCCESSORS AND ASSIGNS, FOREVER, AND HEREBY GRANTS TO LENDER AND ITS SUCCESSORS AND ASSIGNS FOREVER A CONTINUING SECURITY INTEREST IN AND TO, ALL OF THE FOLLOWING (COLLECTIVELY REFERRED TO HEREIN AS THE "MORTGAGED ASSETS"):

(a) Land. All of the land described on Exhibit A attached hereto, together with all tenements, rights, easements, hereditaments, rights of way, privileges, liberties, appendages and appurtenances now or hereafter belonging or in any-wise appertaining to the land (including, without limitation, all rights relating to storm and sanitary sewer, water, gas, electric, railway and telephone services); all air rights, water, water rights, water stock, gas, oil, minerals, coal and other substances of any kind or character underlying or relating to the land; all estate, claim, demand, right, title or interest of Borrower in and to any street, road, highway, or alley (vacated or otherwise) adjoining the land or any part

UNOFFICIAL COPY

thereof; all strips and gores belonging, adjacent or pertaining to the land; and any after-acquired title to any of the foregoing (all of the foregoing is herein referred to collectively as the "Land");

(b) Improvements and Fixtures. All buildings, structures, replacements and other improvements and property of every kind and character now or hereafter located or erected on the Land, together with all furnishings, fixtures, fittings, building or construction materials, equipment, appliances, machinery, plant equipment, apparatus, and other articles of any kind or nature whatsoever now or hereafter found on, affixed to or attached to the Land, including (without limitation) all motors, boilers, engines and devices for the operation of pumps, and all heating, electrical, lighting, power, plumbing, air conditioning, refrigeration and ventilation equipment (except to the extent any of the foregoing items in this subparagraph are owned by tenants and such tenants have the right to remove such items at the termination of their Lease (as hereinafter defined)) (all of the foregoing are herein referred to collectively as the "Improvements," all of the Land and the Improvements, and any other property which is real estate under applicable law, is sometimes referred to collectively herein as the "Premises");

(c) Personal Property. All equipment, goods, inventory and supplies, including without limitation, machinery appliances, stoves, refrigerators, water fountains and coolers, fans, heaters, incinerators, compactors, water heaters and similar equipment, signs, blinds, window shades, carpeting, floor coverings, office equipment, furniture, linens, growing plants, fire sprinklers and alarms, control devices, (HVAC, all window cleaning, building cleaning, swimming pool, recreational, monitoring, garbage, pest control and other equipment, tools, furnishings, furniture, pipes, plumbing, light fixtures, non-structural additions to the Premises, and all other tangible property of any kind or character now or hereafter owned by Trustee and/or Beneficiary and used or useful in connection with the Premises, any construction undertaken on the Premises, any trade, business or other activity (whether or not engaged in for profit) for which the Premises is used, the maintenance of the Premises or the convenience of any tenants, guests, licensees or invitees of Borrower, all regardless of whether located on the Premises or located elsewhere (except to the extent any of the foregoing items in this subparagraph are owned by tenants and such tenants have the right to remove such items at the termination of their Leases (all of the foregoing is herein referred to collectively as the "Goods");

(d) Intangibles. All goodwill, trademarks, trade names, option rights, purchase contracts, books and records and general intangibles of Trustee and/or Beneficiary relating to the Premises or the Improvements and all accounts, contract rights, instruments, chattel paper and other rights of Trustee and/or Beneficiary for payment of money, for property sold or lent, for services

UNOFFICIAL COPY

rendered, for money lent, or for advances or deposits made, and any other intangible property of Trustee and/or Beneficiary related to the Land or the Improvements, and all accounts and monies held in possession of Lender for the benefit of Borrower (all of the foregoing is herein referred to collectively as the "Intangibles");

(e) Rents. All rents, issues, profits, royalties, avails, income and other benefits derived or owned by Trustee and/or Beneficiary directly or indirectly from the Land or the Improvements (all of the foregoing is herein collectively called the "Rents");

(f) Leases. All rights of Trustee and/or Beneficiary under all leases, licenses, occupancy agreements, concessions or other arrangements, whether written or oral, whether now existing or entered into at any time hereafter, whereby any person agrees to pay money or any consideration for the use, possession or occupancy of, or any estate in, the Land or the Improvements or any part thereof, and all rents, income, profits, benefits, avails, advantages and claims against guarantors under any thereof (all of the foregoing is herein referred to collectively as the "Leases");

(g) Service Agreements. All rights and interests of Trustee and/or Beneficiary in and under any and all service and other agreements relating to the operation, maintenance, and repair of the Premises or the buildings and improvements thereon ("Service Agreements");

(h) Plans. All plans, specifications, architectural renderings, drawings, licenses, permits, soil test reports, other reports of examinations or analyses, contracts for services to be rendered Borrower, or otherwise in connection with the Premises and all other property, contracts, reports, proposals, and other materials now or hereafter existing in any way relating to the Premises or the Mortgaged Assets or construction of additional improvements thereto (the "Plans");

(i) Loan Proceeds. All proceeds, contract rights and payments payable to Borrower under any loan commitment for financing of the Premises ("Loan Proceeds");

(j) Insurance. All unearned premiums, accrued, accruing or to accrue under insurance policies now or hereafter obtained by Trustee and/or Beneficiary and all proceeds of the conversion, voluntary or involuntary, of the Mortgaged Assets or any part thereof into cash or liquidated claims, including, without limitation, proceeds of hazard and title insurance and all awards and compensation heretofore and hereafter made to the present and all subsequent owners of the Mortgaged Assets by any governmental or other lawful authorities

UNOFFICIAL COPY

for the taking by eminent domain, condemnation or otherwise, of all or any part of the Mortgaged Assets or any easement therein, including awards for any change of grade of streets;

(k) Awards. All judgments, awards of damages and settlements which may result from any damage to the Premises or any part thereof or to any rights appurtenant thereto; all compensation, awards, damages, claims, rights of action and proceeds of, or on account of (i) any damage or taking, pursuant to the power of eminent domain, of the Premises or any part thereof, (ii) any damage to the Premises by reason of the taking, pursuant to the power of eminent domain, of other property or of a portion of the Premises, or (iii) the alteration of the grade of any street or highway on or about the Premises or any part thereof; all proceeds of any sales or other dispositions of the Premises or any part thereof;

(l) Betterments. With all right, title and interest of Borrower in and to all extensions, improvements, betterments, renewals, substitutes and replacements of, and all additions and appurtenances to, the Premises, hereafter acquired by, or released to, Trustee and/or Beneficiary or constructed, assembled or placed by Trustee and/or Beneficiary on the Premises, and all conversions of the security constituted thereby, immediately upon such acquisition, release, construction, assembling, placement or conversion, as the case may be, and in each such case, without any further mortgage, conveyance, assignment or other act by Trustee and/or Beneficiary, shall become subject to the lien of this Mortgage as fully and completely, and with the same effect, as though now owned by Trustee and/or Beneficiary and specifically described herein.

(m) Other Property. All other property or rights of Trustee and/or Beneficiary of any kind or character related to the Land or the Improvements, and all proceeds (including, without limitation, insurance and condemnation proceeds) and products of any of the foregoing. It is specifically understood that the enumeration of any specific articles of property shall not exclude or be deemed to exclude any items of property not specifically mentioned. All of the Premises hereinabove described, real, personal and mixed, whether affixed or annexed or not, and all rights hereby conveyed and mortgaged are intended to be a unit and are hereby understood and agreed and declared to be appropriated to the use of the Premises, and shall for the purposes of this Mortgage be deemed to be real estate and conveyed and mortgaged hereby.

TO HAVE AND TO HOLD the Premises unto Lender, its successors and assigns, forever, hereby expressly waiving and releasing any and all right, benefit, privilege, advantage or exemption under and by virtue of any and all statutes and laws of the State of Illinois or other jurisdiction in which the Land is located providing for the exemption of homesteads from sale on execution or otherwise.

UNOFFICIAL COPY

PROVIDED, NEVERTHELESS, that if Borrower, its successors or assigns, shall:

- (1) timely pay to the Lender, its successors or assigns, all payments of principal, interest, penalties, fees and all other amounts due and owing according to the terms of the Notes, this Mortgage and the other Loan Documents, including interest at the Default Rate, if applicable; and
- (2) keep and perform all of the covenants and agreements contained in the Notes, the Loan Agreement and all other Loan Documents,

then the Lender shall (notwithstanding any covenants or agreements in the Environmental Indemnity Agreement or any other Loan Document that survives the performance by Borrower required under Section (2) above) release this Mortgage.

THIS MORTGAGE SECURES MANDATORY FUTURE ADVANCES TO BE MADE FROM TIME TO TIME IN ACCORDANCE WITH THE LOAN AGREEMENT.

Borrower hereby covenants with Lender and with the purchaser at any foreclosure sale: that at the execution and delivery hereof Trustee is well seized of the Premises, and of a good, indefeasible estate therein, in fee simple; that the Mortgaged Assets are free from all encumbrances whatsoever (and any claim of any other person thereto) other than those exceptions and encumbrances expressly permitted by Lender ("Permitted Exceptions"); that it has good and lawful right to sell, mortgage and convey the Mortgaged Assets; and that Borrower and its successors and assigns will forever defend the Mortgaged Assets against all claims and demands whatsoever.

I. COVENANTS AND AGREEMENTS OF BORROWER

Further to secure the payment and performance of the Liabilities, Borrower hereby covenants and agrees with Lender as follows:

1.1. Payment of Liabilities. Borrower agrees that it will pay, timely and in the manner required in the appropriate documents or instruments, the principal of and interest on the Notes, and all other Liabilities (including fees and charges). All sums payable by Borrower hereunder shall, except as expressly set forth herein, be paid without demand, counterclaim, offset, deduction or defense. Borrower waives all rights now or hereafter conferred by statute or otherwise to any such demand, counterclaim, offset, deduction or defense.

558911637

UNOFFICIAL COPY

1.2. Impositions.

1.2.1. Payment of Taxes.

(a) Borrower will pay before delinquent all taxes and assessments, general or special, and any and all levies, claims, charges, expenses and liens, ordinary or extraordinary, governmental or non-governmental, statutory or otherwise, due or to become due (collectively referred to herein as an "Imposition" or "Impositions"), that may be levied, assessed, made, imposed or charged on or against the Mortgaged Assets or any property used in connection therewith, and will pay before due any tax or other charge on the interest or estate in lands created or represented by this Mortgage or by any of the other Loan Documents, whether levied against Borrower or Lender or otherwise, and will submit to Lender all receipts showing payment of all of such taxes, assessments and charges.

(b) Notwithstanding anything to the contrary contained in the foregoing sentence, if, by law, any Imposition, at the option of the taxpayer, can and customarily is paid in installments, whether or not interest shall accrue on the unpaid balance of such Imposition, Borrower may, so long as no Event of Default shall exist under this Mortgage or any other Loan Document, exercise the option to pay such Imposition in installments and, in such event, shall pay such installments, together with any interest thereon, as the same become due and payable and before any fine, penalty, additional interest or cost may be added thereto.

1.2.2. Contest of Impositions. Borrower shall have the right at its own expense to contest the amount or validity, in whole or in part, of any Imposition, by appropriate proceedings diligently conducted in good faith, but only after payment of such Imposition unless such payment would operate as a bar to such contest or interfere materially with the prosecution thereof, in which event, notwithstanding the provisions of Section 1.2(a) above, payment of such Imposition shall be postponed if and only so long as:

(a) Neither the Premises nor any part thereof would by reason of such postponement or deferment be, in the judgment of Lender, in danger of being forfeited or lost; and

(b) Borrower shall, upon demand by Lender, have deposited with Lender the amount so contested and unpaid, together with all interest and penalties in connection therewith and all charges that may or might be assessed against or become a charge on the Premises or any part thereof in such proceedings. Upon termination of any such proceedings, it shall be the obligation of Borrower to pay the amount of such Imposition or part thereof as

UNOFFICIAL COPY

finally determined in such proceedings, the payment of which may have been deferred during the prosecution of such proceedings, together with any costs, fees (including counsel fees), interest, penalties or other liabilities in connection therewith. Upon such payment, Lender shall return any amount deposited with it with respect to such Imposition. Lender shall, if requested by Borrower, disburse said moneys on deposit with it directly to the imposing authority to whom such Imposition is payable. Upon failure of Borrower so to do, the amount theretofore deposited may be applied by Lender to the payment, removal and discharge of such Imposition, the interest and penalties in connection therewith and any costs, fees (including reasonable attorney's fees) or other liability accruing in any such proceedings. The balance, if any, shall be returned to Borrower and the deficiency, if any, shall be paid by Borrower to Lender within five (5) days after demand therefor.

1.2.3. Funds for Taxes and Insurance. Borrower shall deposit with Lender or its designee, concurrently, herewith and on the first day of each month during the term hereof, an amount sufficient to discharge the obligations of Borrower under Sections 1.2.1 and 1.7 hereof as and when they become due. The determination of the amount payable concurrently herewith and the fractional part to be deposited on the first day of each month thereafter with Lender shall be made by Lender in its discretion based on the prior year's taxes and insurance premiums and Lender's estimate of the amount by which taxes and insurance premiums can be expected to rise. Said amounts shall be held by Lender or its designee in an interest bearing account and shall be applied to the payment of the obligations in respect to which the amounts were deposited or, at the option of Lender, to the payment of said obligations in such order or priority as Lender shall determine. If at any time within thirty (30) days prior to the due date of any of the aforementioned obligations the amounts then on deposit therefor shall be insufficient for the payment of such obligation in full, Borrower shall within ten (10) days after demand deposit the amount of the deficiency with Lender. If the amounts deposited are in excess of the actual obligations for which they were deposited, Lender may refund any such excess, or, at its option, may hold the same in a reserve account, not in trust and not bearing interest. Nothing herein contained shall be deemed to affect any right or remedy of Lender under any other provision of this Mortgage or under any statute or rule of law to pay any such amount and to add the amount so paid to the Liabilities hereby secured. All amounts so deposited shall be held by Lender or its designee as additional security for the Liabilities secured by this Mortgage and upon the occurrence of an Event of Default hereunder Lender may, in its sole and absolute discretion and without regard to the adequacy of its security hereunder, apply such amounts or any portion thereof to any part of the indebtedness secured hereby. Any such application of said amounts or any portion thereof to any indebtedness secured hereby shall not be construed to cure or waive any Event of Default or notice of default hereunder or invalidate any act done pursuant to any such Event of Default or notice. Borrower shall deliver to Lender all tax bills, bond and assessment statements, statements of insurance premiums, and statements for any other obligations referred to above as soon as the same are received by

95641157

UNOFFICIAL COPY

Borrower. If Lender sells or assigns this Mortgage, Lender shall have the right to transfer all amounts deposited under this Section 1.2.3. to the purchaser or assignee, and Lender shall thereupon be released and have no further liability hereunder for the application of such deposits, and Borrower shall look solely to such purchaser or assignee for such application and for all responsibility relating to such deposits.

1.3. Maintenance and Repair; Protection of Security.

1.3.1. Borrower will: (a) not abandon the Premises; not do or suffer anything to be done which would depreciate or impair the value of the Mortgaged Assets or the security of this Mortgage; not remove or demolish any of the Improvements; (b) pay promptly for all labor and materials for all construction, repairs and improvements to or on the Premises; not make any changes, additions or alterations to the Land or the Improvements, except as required by applicable governmental requirements or as otherwise approved in writing by Lender; (c) maintain, preserve and keep the Goods and the Improvements in good, safe and insurable condition and repair and promptly make any needful and proper repairs, replacements, renewals, additions or substitutions required by wear, damage, obsolescence or destruction; (d) promptly restore and replace any of the Improvements or Goods which are destroyed or damaged; (i) not commit, suffer, or permit waste of any part of the Premises; and maintain all grounds and abutting sidewalks in good and neat order and repair.

1.3.2. Borrower shall promptly notify Lender of and appear in and defend any suit, action or proceeding that affects the Premises or the rights or interest of Lender hereunder and the Lender may elect to appear in or defend any such action or proceeding. Borrower agrees to indemnify, defend, and reimburse Lender from any and all loss, damage, expense or cost arising out of or incurred in connection with any such suit, action or proceeding, including costs of evidence of title and reasonable attorneys' fees and such amounts together with interest thereon at the Interest Rate, shall become additional Liabilities and shall become immediately due and payable.

1.4. Sales; Liens. Borrower shall not:

1.4.1. directly or indirectly sell, contract to sell (if possession of the Premises is to be transferred prior to the closing date, such as an installment agreement for deed), assign, transfer, convey, or dispose of the Premises, or any part thereof or any interest or estate therein, whether legal, equitable, beneficial or possessory [including, without limitation, (i) any conveyance into trust, (ii) any conveyance, sale or assignment of the beneficial interest in any trust holding title to the Premises, (iii) any conveyance, sale or assignment of or any part of any general partner's interest in a partnership holding title to the Premises or a partnership beneficiary of a trust holding title to the Premises, (iv) any sale, conveyance or assignment of more than 10% in the aggregate during the term hereof of the issued and outstanding capital stock which has voting rights of a corporation holding title to the Premises or a corporate beneficiary of a trust holding title

95861167

UNOFFICIAL COPY

the Premises, or permit or contract or agree to do any of the foregoing; or (v) any sale, conveyance or assignment of more than 10% in the aggregate during the term hereof of the member's interest or any sale, conveyance or assignment of any manager's interest in any limited liability company holding title to the Premises or a limited liability company beneficiary of a trust holding title to the Premises);

1.4.2. subject or permit the Premises, or any portion thereof or interest therein (whether legal, equitable, beneficial or otherwise) or estate in any thereof (including the right to receive the rents and profits therefrom) directly or indirectly, to any mortgage, deed of trust, lien, claim, security interest, encumbrance or right (whether senior or junior to, or on a parity with, this Mortgage); or

1.4.3. subject or permit the beneficial interest under any trust holding title to the Premises, or any portion thereof or interest therein (whether legal, equitable, beneficial or otherwise) or estate in any thereof (or permit the same to be subjected), directly or indirectly, to any mortgage, deed of trust, lien, claim, security interest, encumbrance, collateral assignment or right, or

1.4.4. lease the Premises, except as expressly permitted in the Loan Agreement.

1.5. Access by Lender. Borrower will at all times: (a) deliver to Lender her all of its executed originals (in the case of chattel paper or instruments) or certified copies (in all other cases) of all leases, agreements creating or evidencing Intangibles, all amendments and supplements thereto, and any other document which is, or which evidences, governs, or creates, Mortgaged Assets; (b) permit access by Lender and its agents, representatives, contractors and participants (if any) during normal business hours to its books and records, tenant registers, offices, insurance policies and other papers for examination and the making of copies and extracts; (c) prepare such schedules, summaries, reports and progress schedules as Lender and its agents, representatives, contractors and participants (if any) may reasonably request; and (d) permit Lender and its agents, representatives, contractors and participants (if any), at all reasonable times, to enter onto and inspect the Premises.

1.6. Stamp and Other Taxes. If the Federal, or any state, county, local, municipal or other, government or any subdivision of any of thereof having jurisdiction, shall levy, assess or charge any tax (excepting therefrom any franchise tax or income tax on the Lender's receipt of interest payments on the principal portion of the Liabilities), assessment or imposition upon this Mortgage, the Liabilities, the Notes or any of the other Loan Documents, the interest of the Lender in the Mortgaged Assets, or any of the foregoing, or upon Lender by reason of or as holder of any of the foregoing, or shall at any time or times require revenue stamps to be affixed to the Notes, this Mortgage, or any of the other Loan Documents, Borrower shall pay all such taxes and stamps to or for Lender as they become due and payable. If any law or regulation is enacted or adopted

95841457

UNOFFICIAL COPY

(e) Contents Insurance: Fire and Extended Coverage Insurance (contents broad form) and Sprinkler Leakage Insurance on Borrower's personal property located on the Premises, and on all improvements or betterment constructed by Borrower, in amounts sufficient to fully insure such personal property;

(f) Flood Insurance: insurance against flood (if required by the Federal Flood Disaster Protection Act of 1973 and regulations issued thereunder or any other law applicable to the Lender);

(g) Business Interruption/Rent Loss Insurance: Business Interruption Insurance with loss of rents endorsement in amounts as Lender shall request but in no amount less than the aggregate of the amount of the monthly rent payable under Leases, from time to time, for the next succeeding one (1) year period;

(h) Plate Glass: plate glass (which may be self-insured by Borrower upon the prior written consent of Lender), sprinkler, garage and machinery explosion and pressurized vessel insurance.

1.7.2. Terms of Policies. All insurance shall be in such amounts satisfactory to the Lender, and all to be maintained in such form and with such companies as shall be approved by the Lender. Borrower shall deliver to and keep deposited with the Lender original certificates and certified copies of all policies of such insurance and renewals thereof, with premiums prepaid, and with (i) standard non-contributory mortgagee and loss payable clauses satisfactory to the Lender entitling Lender to collect any and all proceeds payable under such insurance, (ii) clauses providing for not less than thirty (30) days' prior written notice to the Lender of cancellation or material modification of such policies, attached thereto in favor of the Lender and (iii) standard waiver of subrogation endorsements. Lender shall be an additional named insured and loss-payee on all policies of insurance delivered by Borrower pursuant to this Mortgage. All of the above-mentioned original insurance policies or certified copies of such policies and certificates of such insurance satisfactory to Lender, together with receipts for the payment of premiums thereon, shall be delivered to and held by Lender, which delivery shall constitute assignment to Lender of all return premiums to be held as additional security hereunder. All renewal and replacement policies shall be delivered to Lender at least thirty (30) days before the expiration of the expiring policies.

1.7.3. Failure to Obtain Insurance. If Borrower shall fail to obtain or to maintain any of the policies required by this Mortgage or any other Loan Document or to pay any premium relating thereto or to renew any such policies and to deliver evidence of such renewal to Lender no later than thirty (30) days prior to the expiration of the existing policy, then Lender, without waiving or releasing any obligation or default by Borrower hereunder and whether or not such failure is an Event of Default hereunder, without notice to Borrower, may (but shall be under no obligation to do so) obtain and

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

maintain such policies of insurance and pay such premiums and take any other action with respect thereto which Lender deems advisable. All sums so disbursed by Lender pursuant to this Section, including costs relating thereto, shall be payable by Borrower to Lender within five (5) days after demand therefor plus interest thereon at the Default Rate, and shall be additional Liabilities.

1.7.4. Blanket Policies. Any insurance provided for in this Section may be effected by a policy or policies of blanket insurance, provided however, the amount of the total insurance allocated to the Premises shall be such as to furnish protection the equivalent of separate policies in the amounts herein required, and provided further that in all other respects, any such policy or policies shall comply with the other provisions of this Mortgage, except that no such policy shall be submitted to Lender less than thirty (30) days prior to expiration of an existing policy. In any such case, it shall not be necessary to deliver the original of any such blanket policy to the Lender, but the Lender shall be furnished with a certificate or duplicate of such policy reasonably acceptable to Lender. Each policy of insurance provided for in this Section shall contain the standard form of waiver of subrogation.

1.7.5. Separate Insurance. Borrower shall not carry any separate insurance on the Improvements or other Mortgaged Assets concurrent in kind or form with any insurance required hereunder or contributing in the event of loss thereunder, unless such policy contains a standard non-contributing mortgagee clause entitling Lender to collect any and all proceeds thereunder as well as a standard waiver of subrogation.

1.7.6. Notice of Loss; Repair of Damage. If the Premises shall be destroyed or damaged in whole or in part, by fire or other casualty (including any casualty for which insurance was not obtained or obtainable) of any kind or nature, ordinary or extraordinary, foreseen or unforeseen, Borrower shall give to Lender and the insurance companies that have insured against such risks immediate notice of such loss. Borrower, at its own cost and expense, whether or not such damage or destruction shall have been insured, and whether or not insurance proceeds, if any, shall be sufficient for the purpose, shall promptly repair, alter, restore, replace and rebuild the same, at least to the extent of the value and as nearly as possible to the character of the Premises existing immediately prior to such occurrence. Lender shall in no event be called upon to repair, alter, replace, restore or rebuild such Premises, or any portion thereof, nor to pay any of the costs or expenses thereof.

1.7.7. Settlement of Loss. Lender (or after entry of a decree of foreclosure, purchaser at the sale, or the decree creditor, as applicable) is authorized to either (i) settle and adjust any claim under such insurance policies which insure against such risk and Lender shall act in its sole and absolute discretion without notice to or consent of Borrower, or (ii) allow Borrower to settle, adjust or compromise any claims for loss with the insurance companies on the amounts to be paid with respect to such loss. Any expenses incurred by Lender in the adjustment, collection or determination of the

UNOFFICIAL COPY

application of insurance proceeds shall be additional indebtedness secured hereby, payable on demand or deducted from insurance proceeds in accordance with Section 1.7(h). Nothing contained in this Mortgage shall create any responsibility or obligation on Lender to collect any amount owing on any insurance policy.

1.7.8. Application of Insurance Proceeds.

(a) In all events, Lender is authorized to collect and receipt for any such insurance proceeds, and such insurance proceeds may, at the option of the Lender, be: (i) applied in reduction of the Secured Obligations, whether due or not; or (ii) held by the Lender and applied to pay for the cost of repair, rebuilding or restoration of the buildings and other improvements on the Premises.

(b) In the event, in Lender's sole and absolute discretion, the proceeds are to be made available to Borrower for the cost of repair, Lender shall be entitled to reimburse itself to the extent of the reasonably necessary and proper expenses paid or incurred by Lender in the collection and administration of such monies, including reasonable attorney's fees. (Any funds received by Lender from insurance provided by Borrower less any funds Lender is entitled to reimburse itself shall be defined herein as "Net Insurance Proceeds"). If, in Lender's sole and absolute discretion, the Net Insurance Proceeds are to be made available by the Borrower for the cost of repair, rebuilding, and restoration, any surplus which may remain out of said proceeds after payment of such cost of repair, rebuilding and restoration and the reasonable charges of the escrowee by disbursing such funds, if applicable, shall, at the option of the Lender, be applied on account of the Secured Obligations or paid to any party entitled thereto as the same appear on the records of the Lender. In the event the Net Insurance Proceeds are to be made available to Borrower for the cost of repair, such proceeds shall be disbursed to Borrower pursuant to such terms and conditions as Lender may in its sole discretion require.

(c) Notwithstanding the foregoing, in case of any loss after foreclosure proceedings have been instituted, all insurance proceeds shall, at Lender's option, be used to pay the amount due in accordance with any decree of foreclosure that may be entered in any such proceedings, and the balance, if any, shall be paid to the owner of the equity of redemption if said owner shall then be entitled to the same, or as the court may otherwise direct. In case of the foreclosure of this Mortgage, the court in its decree may provide that the mortgagee's clause attached to each of said insurance policies may be canceled and that the decree creditor may cause a new loss clause to be attached to each of said policies making the loss thereunder payable to said decree creditor. Any foreclosure decree may further provide that in case of any one or more redemptions made under said decree, each successive redelector may cause the

UNOFFICIAL COPY

preceding loss clause attached to each insurance policy to be canceled and a new loss clause to be attached thereto, making the loss thereunder payable to such redeptor. In the event of foreclosure sale, Lender is hereby authorized, without the consent of Borrower, to assign any and all insurance policies to the purchaser at the sale, or to take such other steps as Lender may deem advisable, to cause the interest of such purchaser to be protected by any of the said insurance policies.

1.8. Condemnation and Eminent Domain. Any and all awards heretofore or hereafter made or to be made to the present or any subsequent owner of the Premises by any governmental or other lawful authority for the taking, by condemnation or eminent domain, of all or any part of the Mortgaged Property, (including any award from the United States governmental at any time after the allowance of a claim therefor, the ascertainment of the amount thereto, and the issuance of a warrant for payment thereof), are hereby assigned by Borrower to Lender, which awards Lender is hereby authorized to negotiate, collect and receive from the condemnation authorities. Lender is hereby authorized to give appropriate receipts and acquittances therefor. Borrower shall give Lender immediate notice of the actual or threatened commencement of any condemnation or eminent domain proceedings affecting all or any part of the Mortgaged Property (including severance of, consequential damage to or change in grade of streets), and shall deliver to Lender copies of any and all papers served in connection with any such proceedings. Borrower further agrees to make, execute and deliver to Lender, free and clear of any encumbrance of any kind whatsoever, any and all further assignments and other instruments deemed necessary by Lender for the purpose of validly and sufficiently assigning all awards and other compensation heretofore, now and hereafter made to Borrower for any taking, either permanent or temporary, under any such proceeding. At Lender's option, any such award may either be applied toward the indebtedness secured by this Mortgage or applied toward restoring the Mortgaged Property in which event the same shall be paid out in the same manner as is provided for insurance proceeds in Section 1.7.8 hereof. Notwithstanding the foregoing, any expenses, including, without limitation, attorneys' fees and expenses, incurred by Lender in intervening in such action or compromising and settling such action or claim, or collecting such proceeds, shall be reimbursed to Lender first out of the proceeds.

1.9. Governmental Requirements.

1.9.1. Compliance with Laws.

(a) Borrower will at all times fully comply with, and cause the Mortgaged Assets and the use and condition thereof fully to comply with, all federal, state, county, municipal, local and other governmental statutes, ordinances, requirements, regulations, rules, orders, licensing provisions and decrees of any kind whatsoever that apply or relate to Borrower or the Mortgaged Assets or the use thereof (including but not limited to any zoning or

UNOFFICIAL COPY

building laws or ordinances, any noise abatement, occupancy, or environmental protection laws or regulations, any rules or regulations of the Federal Aviation Administration, or any rules, regulations or orders of any governmental agency), and will observe and comply with all conditions and requirements necessary to preserve and extend any and all rights, licenses, permits, privileges, easements, rights-of-way, covenants, restrictions, grants, franchises and concessions (including, without limitation, those relating to land use and development, landmark preservation, construction, access, water rights and use, noise and pollution) which are applicable to Borrower or have been granted (whether or not of record) for the Mortgaged Assets or the use thereof. Unless required by applicable law or unless Lender has otherwise first agreed in writing, Borrower shall not make or allow any changes to be made in the nature of the occupancy or use of the Premises or any portion thereof for which the Premises or such portion was intended at the time this Mortgage was delivered. Borrower shall not initiate or acquiesce in any change in any zoning or other land use classification now or hereafter in effect and affecting the Premises or any part thereof without in each case obtaining Lender's prior written consent thereto.

(b) At all times the environmental and ecological condition of the Premises shall not be in violation of any law, ordinance, rule or regulation applicable thereto; the soil, surface, water and ground water of or on the Premises shall be free from any solid waste, toxic, hazardous or special substances or contaminants; and the Premises shall not be used for the manufacture, refinement, treatment, storage, hauling or disposal of any such material. No "**Hazardous Materials**" (as hereinafter defined) shall be discharged, dispersed, released, stored, treated, generated, disposed of, or allowed to escape on the Premises; no asbestos or asbestos-containing materials shall be installed, used, incorporated into or disposed of on the Premises; no polychlorinated biphenyls ("**PCBs**") will be located on, in, or used in connection with the Premises; no underground storage tanks shall be located on the Premises; and the Premises shall be in compliance with all applicable federal, state and local statutes, laws, regulations, ordinances, orders, or codes relating to environmental matters.

(c) "**Hazardous Materials**" means asbestos, PCBs, and any hazardous, toxic or special substance, material or waste that is regulated by any governmental authority, including the State of Illinois or the United States government and includes, without limitation, any material, substance or waste that is (i) designated as such pursuant to Section 307 of the Federal Water Pollution Control Act 33 U.S.C. §1251 et seq. (33 U.S.C. §1317); (ii) defined as such pursuant to §1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq. (42 U.S.C. §6903); (iii) defined as such pursuant to §101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601 et seq. (42 U.S.C. §9601); or (iv) designated or

UNOFFICIAL COPY

defined under any applicable federal or state statute or county or municipal law, regulation, ordinance, order or code, in each case as amended.

1.9.2. Contest of Laws. Borrower shall have the right, after prior notice to Lender and so long as there exists no material threat to the priority of the lien of the Mortgage, the Loan Documents or the value of the Mortgaged Assets, to contest by appropriate legal proceedings conducted in the name of Borrower, the validity or application of any ordinances, requirements, regulations, rules, orders and decrees of the nature referred to in subsection 1.9.1. above. Borrower shall indemnify and hold Lender harmless from any cost, expense, liability or damage, including reasonable attorney's fees, relating to such contest.

1.10. Mechanics' Liens.

1.10.1. Prohibitions Against Liens. Subject to Borrower's rights set forth in Section 1.10.2, Borrower will not permit any mechanics' or other construction lien under the laws of Illinois to be recorded against or attach to the Premises or any part thereof. In addition, it is further expressly made a covenant and condition hereof that the lien of this Mortgage shall extend to any and all improvements and fixtures now or hereafter on the Premises, prior to any other lien thereon that may be claimed by any person, so that subsequently accruing claims for lien on the Premises shall be junior and subordinate to this Mortgage. ALL CONTRACTORS, SUBCONTRACTORS, AND OTHER PARTIES DEALING WITH THE PREMISES, OR WITH ANY PARTIES INTERESTED THEREIN, ARE HEREBY REQUIRED TO TAKE NOTICE OF THE ABOVE PROVISIONS.

1.10.2. Discharge and Contest of Mechanics' Liens. If any mechanic's, laborer's or materialmen's lien shall at any time be filed against the Premises or any part thereof, Borrower, within 30 days after notice of the filing thereof, shall cause the same to be discharged of record or otherwise stayed by payment, deposit, order of a court of competent jurisdiction ("**Discharged**") or, (ii) in the event Borrower elects to contest such lien in good faith and due diligence, bonded or insured over by a title insurance company acceptable to Lender, in form and substance acceptable to Lender ("**Bonded**") (the "**Title Company**"). If Borrower shall fail to cause such lien to be Discharged or Bonded in accordance within such period then, in addition to any other right or remedy, Lender may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding proceedings, and in any such event Lender shall be entitled, if Lender so elects, to compel the prosecution of an action for the foreclosure of such lien by the lienor and to pay the amount of the judgment in favor of the lienor, with interest, costs and allowances. In any event, if any suit, action or proceedings shall be brought to foreclose or enforce any such lien (whether or not the prosecution thereof was so compelled by Lender), Borrower shall, at its own sole cost and expense, promptly pay, satisfy and discharge any final judgment entered therein, in default of which Lender, at its option, may three (3) days after notice thereof, do so. Any and all amounts so paid by Lender as

93841157

UNOFFICIAL COPY

in this Section provided, and all costs and expenses paid or incurred by Lender in connection with any or all of the foregoing matters, including, without limitation, reasonable attorneys' fees and disbursements shall become due and payable within five (5) days after notice thereof, such amounts, charges, costs, expenses, fees and sums, together with interest thereon at the default rate of interest specified under the Notes.

1.11. Continuing Priority. Subject to Borrower's right to contest set forth in Sections 1.9 and 1.10 hereof, Borrower will: pay such fees, Impositions and charges, execute and file (at Borrower's expense) such financing statements, obtain such acknowledgments or consents, notify such obligors or providers of services and materials and do all such other acts and things as Lender may from time to time request to establish and maintain a valid and perfected first and prior lien on and security interest in the Mortgaged Assets and to provide for payment to Lender directly of all cash proceeds thereof, with Lender in possession of the Mortgaged Assets to the extent it requests; keep all of its books and records relating to the Mortgaged Assets on the Premises or at the principal office of Borrower; keep all tangible Mortgaged Assets on the Premises, except as Lender may otherwise consent in writing; make notations on its books and records sufficient to enable Lender, as well as third parties, to determine the interest of the Lender hereunder, and not collect any rents or the proceeds of any of the Leases or Intangibles more than thirty (30) days before the same shall be due and payable (except as the Lender may otherwise consent in writing), except for deposits by tenants of the Premises to secure such tenant's performance of its obligations under its Lease.

1.12. Utilities. Borrower will pay all utility charges incurred in connection with the Premises promptly when due and maintain all utility services available for use at the Premises.

1.13. Contract Maintenance; Other Agreements. Borrower will, for the benefit of Lender, fully and promptly keep, observe, perform and satisfy each obligation, condition, covenant, and restriction affecting the Premises or imposed on it under any agreement between Borrower and a third party relating to the Mortgaged Assets or the Liabilities so that there will be no default thereunder and so that the persons (other than Borrower) obligated thereon shall be and remain at all times obligated to perform for the benefit of the Lender. Except as expressly contemplated in the Loan Documents, Borrower will not permit to exist any condition, event or fact which could allow or serve as a basis or justification for any such person to avoid such performance.

1.14. Notify Lender of Default. Borrower shall notify Lender in writing within five (5) days after the date on which it becomes aware of or receives notice of the occurrence of any Event of Default or other event which, upon the giving of notice or the passage of time or both, would constitute an Event of Default hereunder or under any of the other Loan Documents (an "Unmatured Default").

95841157

UNOFFICIAL COPY

1.15. No Assignments; Future Leases. Borrower will not cause or permit (by operation of law or otherwise) any Rents, Leases, or other contracts relating to the Premises to be assigned to any party other than Lender without first obtaining the express written consent of Lender to any such assignment or permit any such assignment to occur by operation of law. In addition, Borrower shall not cause or permit all or any portion of or interest in the Premises or the Improvements to be leased (that word having the same meaning for purposes hereof as it does in the law of landlord and tenant) directly or indirectly to any person, except in accordance with Section 1.4 hereof.

1.16. Borrower To Comply With Leases. Borrower will, at its own cost and expense:

(a) Faithfully abide by, perform and discharge each and every obligation, covenant and agreement under any Leases to be performed by the landlord thereunder;

(b) Enforce or secure the performance of each and every material obligation, covenant, condition and agreement of Leases by the tenants thereunder to be performed;

(c) Not borrow against, pledge or further assign any rentals due under the Leases;

(d) Not permit the prepayment of any rents due under any Lease for more than thirty (30) days in advance nor for more than the next accruing installment of rents, nor anticipate, discount (other than front-end incentives such as rent abatement), compromise, forgive or waive any such rents;

(e) Not waive, excuse, condone or in any manner release or discharge any tenants of or from the obligations, covenants, conditions and agreements by said tenants to be performed under the Leases without the express prior written consent of Lender;

(f) Not permit any tenant to assign or sublet its interest in its Lease unless expressly required to do so by the terms of the Lease and then only if such assignment does not work to relieve the tenant of any liability for payment of and performance of its obligations under the Lease and only if the new tenant is of the same or better creditworthiness as the prior tenant and the terms of the new Lease provide for the same or better use of the leased space;

(g) Not terminate any Lease or accept a surrender thereof or a discharge of the tenant unless required to do so by the terms of its Lease or unless Borrower and tenant or another equally financially responsible tenant shall have executed a new Lease effective upon such termination for the same

UNOFFICIAL COPY

term of years at a rental not less than as provided in the terminated lease and on terms no less favorable to the landlord than as in the terminated Lease;

(h) Not consent to a subordination of the interest of any tenant to any party other than Lender and then only if specifically consented to by the Lender; and

(i) Not amend or modify any Lease or alter the obligations of the parties thereunder.

1.17. Lender's Right to Perform Under Leases. Should Borrower fail to perform, comply with or discharge any obligations of Borrower under any Lease or should the Lender become aware of or be notified by any tenant under any Lease of a failure on the part of Borrower to so perform, comply with or discharge its obligations under said Lease, Lender may, but shall not be obligated to, and without further demand upon Borrower, and without waiving or releasing Borrower from any obligation in this Mortgage contained, remedy such failure, and Borrower agrees to repay upon demand all sums incurred by the Lender in remedying any such failure together with interest at the Default Rate. All such sums, together with interest at the Default Rate shall become so much additional Liabilities, but no such advance shall be deemed to relieve Borrower from any default hereunder.

1.18. Assignment of Rents, Leases and Profits.

1.18.1. Borrower does hereby sell, assign, and transfer unto Lender all of the Rents, Leases and profits from the Premises, it being the intention of this Mortgage to establish an absolute transfer and assignment of all such Rents, Leases and profits from and on the Premises unto the Lender and Borrower does hereby appoint irrevocably Lender its true and lawful attorney, in its name and stead, which appointment is coupled with an interest, to collect all of said Rents and profits; provided that Lender grants Borrower the privilege to collect and retain such rents, income, and profits unless and until an Event of Default exists under this Mortgage.

1.18.2. Upon the occurrence of an Event of Default, and whether before or after the institution of legal proceedings to foreclose the lien hereof or before or after sale of the Premises or during any period of redemption, Lender, without regard to waste, adequacy of the security or solvency of Borrower, may revoke the privilege granted Borrower hereunder to collect the rents, issues and profits of the Premises, and may, at its option, without notice:

(a) in person or by agent, with or without taking possession of or entering the Premises, with or without bringing any action or proceeding, give, or require Borrower to give, notice to any or all tenants under any Lease authorizing and directing the tenant to pay such rents and profits to Lender;

UNOFFICIAL COPY

collect all of the rents, issues and profits; enforce the payment thereof and exercise all of the rights of the landlord under any Lease and all of the rights of Lender hereunder; enter upon, take possession of, manage and operate said Premises, or any part thereof; cancel, enforce or modify any Lease, and fix or modify rents, and do any acts which the Lender deems proper to protect the security hereof with or without taking possession of said Premises; and

(b) apply for the appointment of a receiver in accordance with the statutes and law made and provided for, which receivership Borrower hereby consents to, which receiver shall collect the rents, profits and all other income of any kind, manage the Premises so as to prevent waste, execute leases within or beyond the period of receivership, and apply the rents, profits and income in the following order:

(i) to payment of all reasonable fees of any receiver appointed hereunder;

(ii) to application of tenant's security deposits;

(iii) to payment when due of prior or current Impositions with respect to the Premises or, if this Mortgage so requires, to the periodic escrow for payment of the Impositions when due;

(iv) to payment when due of premiums for insurance of the type required by the Mortgage or as deemed reasonably necessary by Lender, or, if this Mortgage so requires, to the periodic escrow for the payment of premiums then due;

(v) to payment of all expenses for maintenance, repair and restoration of the Premises;

(vi) if received prior to a foreclosure sale, such amounts shall be paid to the Lender and applied by Lender to the Liabilities in accordance with the terms of the Notes; provided that, if the Premises shall be foreclosed and sold pursuant to a foreclosure sale, then during the period of redemption from such foreclosure sale:

(1) if the Lender is the purchaser at the foreclosure sale, the rents shall be paid to the Lender to be applied to the extent of any deficiency remaining after the sale, the balance to be retained by the Lender, and if the Premises be redeemed by Borrower or any other party entitled to redeem (such right to redeem Borrower hereby acknowledging that It has waived in accordance with the terms hereof); to be applied as a credit

UNOFFICIAL COPY

against the redemption price provided that, if the Premises not be redeemed, any remaining excess rents are to be paid to the Lender whether or not a deficiency exists;

(2) If the Lender is not the purchaser at the foreclosure sale, the rents shall be paid to the Lender to be applied to the Secured Obligation to the extent of any deficiency remaining after the sale, and the balance, if any, shall be paid to the purchasers to be applied as a credit against the redemption price, provided that, if the Premises not be redeemed, any remaining excess rents shall be paid to the purchasers.

1.18.3. The entering upon and taking possession of the Premises, the collection of such rents and profits and the application thereof as aforesaid shall not cure or waive any defaults under this Mortgage nor in any way operate to prevent the Lender from pursuing any other remedy which it may now or hereafter have under the terms of this Mortgage nor shall it in any way be deemed to constitute the Lender a mortgagee-in-possession. The rights and powers of the Lender hereunder shall remain in full force and effect both prior to and after any foreclosure of the Mortgage and any sale pursuant thereto and until expiration of the period of redemption from said sale (such right to redeem Borrower hereby acknowledging that it has waived in accordance with the terms hereof), regardless of whether a deficiency remains from said sale. The purchaser at any foreclosure sale, including the Lender, shall have the right, at any time and without limitation, to advance money to any receiver appointed hereunder to pay any part or all of the items which the receiver would otherwise be authorized to pay if cash were available from the Premises and the sum so advanced, with interest at the Default Rate, shall be a part of the sum required to be paid to redeem from any foreclosure sale.

1.18.4. The rights hereunder shall in no way be dependent upon and shall apply without regard to whether the Premises are in danger of being lost, materially injured or damaged or whether the Premises are adequate to discharge the Liabilities. The rights contained herein are in addition to and shall be cumulative with the rights given in any separate instrument, if any, assigning any leases, rents and profits of the Premises and shall not amend or modify the rights in any such separate agreement.

1.19. Lender's Performance. If Borrower fails to pay or perform any of its obligations herein contained (including payment of expenses of foreclosure and court costs) and all applicable grace or cure periods have expired, Lender may (but need not), as agent or attorney-in-fact of Borrower, make any payment or perform (or cause to be performed) any obligation of Borrower hereunder, in any form and manner deemed expedient by Lender, and any amount so paid or expended (plus reasonable compensation to Lender for its out-of-pocket and other expenses for each matter for which it acts under this Mortgage), with interest thereon at the Default Rate, shall be

UNOFFICIAL COPY

added to the principal debt hereby secured and shall be repaid to Lender within five (5) days after notice thereof. By way of illustration only, and not in limitation of the foregoing, Lender may (but shall have no obligation to) do all or any of the following: make payments of principal or interest or other amounts on any lien, encumbrance or charge on any of the Mortgaged Assets; make repairs; collect rents; prosecute collection of the Mortgaged Assets or proceeds thereof; purchase, discharge, compromise or settle any tax lien or any other lien, encumbrance, suit, proceeding, title or claim thereof; contest any tax or assessment; and redeem from any tax sale or forfeiture affecting the Premises. In making any payment or securing any performance relating to any obligation of Borrower hereunder, Lender shall (as long as it acts in good faith) be the sole judge of the legality, validity and amount of any lien or encumbrance and of all other matters necessary to be determined in satisfaction thereof. No such action of Lender shall ever be considered as a waiver of any right accruing to it on account of the occurrence of any matter which constitutes an Event of Default.

1.20. Subrogation. To the extent that Lender, on or after the date hereof, pays any sum under any provision of law or any instrument or document creating any lien or other interest prior or superior to the lien of this Mortgage, or Borrower or any other person pays any such sum with the proceeds of the loan secured hereby, Lender shall have and be entitled to a lien or other interest on the Mortgaged Assets equal in priority to the lien or other interest discharged and Lender shall be subrogated to, and receive and enjoy all rights and liens possessed, held or enjoyed by, the holder of such lien, which shall remain in existence and benefit Lender in securing the Liabilities.

II. DEFAULT

Each of the following shall constitute an event of default ("Event of Default") hereunder (including, if Borrower consists of more than one person or entity, the occurrence of any of such events with respect to any one or more of such persons or entities):

2.1. Payment; Performance. (i) Failure to make any payment of principal, interest, fees or any other amount due under the Notes (or any one or more of them) or this Mortgage within ten (10) days after written notice thereof given by Lender to Borrower; (ii) failure to pay any of the other Liabilities, when and as the same shall become due and payable, whether at maturity or by acceleration or otherwise within ten (10) days after written notice thereof given by Lender to Borrower; or (iii) except as specifically set forth in any other provision of this Article II., (x) default in the timely and proper performance of any of the covenants or agreements of Borrower contained herein, and the continuation of such failure for thirty (30) days after written notice thereof is given to Borrower by Lender; (y) default in the performance of any of the covenants or agreements of Trustee, Beneficiary, any Guarantor or any one or more of them, as applicable, contained in the Notes (or any one or more of them), the Loan Agreement,

05541157

UNOFFICIAL COPY

the Guaranty or in any of the other Loan Documents, provided that to the extent (if any) that such other document or instrument provides a grace or cure period with respect to such default, the same grace or cure period, and only such period, shall apply with respect thereto under this Mortgage; or (z) default in the performance of any covenant or agreement set forth in Sections 1.4., 1.7. or 1.9. herein.

2.2. Receiver, Suspension, Attachment. The appointment, pursuant to an order of a court of competent jurisdiction, of a trustee, receiver or liquidator of the Mortgaged Assets or any part thereof, or of Borrower, or any termination or voluntary suspension of the transaction of business of Borrower, or any attachment, execution or other judicial seizure of all or any substantial portion of Borrower's assets which attachment, execution or seizure is not discharged within sixty (60) days.

2.3. Miscellaneous. (a) If Borrower or any Guarantor is a corporation and such corporation dissolves, liquidates, or fails to maintain its corporate existence or amends its articles of incorporation or by-laws in any material respect; (b) if Borrower or any Guarantor is a partnership and such partnership dissolves, liquidates, or fails to maintain its partnership existence or amends its certificate of limited partnership or partnership agreement in any material respect; (c) if Borrower or any Guarantor is a limited liability company and such limited liability company dissolves, liquidates, or fails to maintain its limited liability company existence or amends its certificate of organization or operating agreement in any material respect; (d) if Borrower or any Guarantor is a trust and such trust dissolves, liquidates, or fails to maintain its trust existence or amends the trust agreement in any material respect; or (e) if Borrower or any Guarantor is a person and such person dies or otherwise becomes incompetent.

2.4. Tax on Lender. The imposition of a tax, other than a state or federal income tax, on or payable by Lender by reason of its ownership of the Notes (or any one or more of them), or this Mortgage, and Borrower not promptly paying said tax, or it being illegal for Borrower to pay said tax.

2.5. Representations and Warranties. Any representation, warranty, or disclosure made to Lender by Borrower or Guarantor in connection with or as an inducement to the making of the loan evidenced by the Note (or any one or more of them), this Mortgage or any of the other Loan Documents, proving to be false or misleading in any material respect as of the time the same was made, whether or not any such representation or disclosure appears as part of this Mortgage.

2.6. Material Destruction of Premises. The Premises or any material part thereof is damaged or destroyed by fire or other casualty and the loss is not adequately covered by insurance actually collected or in the process of collection, and Borrower fails to deposit or to cause to be deposited with the Lender the full amount of the deficiency in cash within ten (10) days of the Lender's written request therefor.

05841167

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

2.7. Condemnation/Eminent Domain. Proceedings are formally commenced by any public or quasi-public body to acquire the land, the Premises or any interest in or any part of any of them by condemnation, eminent domain or any similar power or authority, and such proceeding are not dismissed within sixty (60) days of there being instituted, unless in the Lender's opinion such acquisition would not materially interfere with the intended uses of the Premises.

2.8. Mechanics Liens. Any lien or notice of lien of any kind whatsoever (whether for the performance of work or services or the supplying of materials or other things, or in the nature of a judgment lien or lien for Impositions, or otherwise) is filed or served against the Premises or any part thereof or is received by the Lender, and remains unsatisfied or unbonded to the Lender's satisfaction for a period of thirty (30) days after Borrower receives notice thereof, provided that Borrower shall have the right to contest such lien in accordance with the terms of Section 1.10. of this Mortgage.

2.9. Creditor's Rights. Borrower or any Guarantor shall fail to pay its debts, make an assignment for the benefit of its creditors, or shall commit an act of bankruptcy, or shall admit in writing its inability to pay its debts as they become due, or shall seek a composition, readjustment, arrangement, liquidation, dissolution or Insolvency proceeding under any present or future statute or law, or shall file a petition under any chapter of the Federal Bankruptcy Code or any similar law, state or federal, now or hereafter existing, or shall become "insolvent" as that term is generally defined under the Federal Bankruptcy Code, or shall in any involuntary bankruptcy case commenced against it file an answer admitting insolvency or inability to pay its debts as they become due, or shall fail to obtain a dismissal of such case within sixty (60) days after its commencement or convert the case from one chapter of the Federal Bankruptcy Code to another chapter, or be the subject of an order for relief in such bankruptcy case, or be adjudged a bankrupt or insolvent, or shall have a custodian, trustee or receiver appointed for, or have any court take jurisdiction of its property, or any part hereof, in any proceeding for the purpose of reorganization, arrangement, dissolution or liquidation, and such custodian, trustee, liquidator or receiver shall not be discharged, or such jurisdiction shall not be relinquished, vacated or stayed within sixty (60) days of the appointment.

III. REMEDIES

3.1. Acceleration. Upon the occurrence of any Event of Default, the entire indebtedness evidenced by Notes and all other Liabilities, together with interest thereon at the Default Rate shall, at the option of Lender, be immediately due and payable, without presentment, demand, protest or notice of any kind to Borrower or to any other person and notwithstanding any other provision thereof.

UNOFFICIAL COPY

3.2. Possession of Premises; Remedies under Loan Documents and Notes.

To the extent permitted by law, Borrower hereby waives all right to the possession, income, and Rents of the Premises from and after the occurrence of any Event of Default. Lender is hereby expressly authorized and empowered, at and following the occurrence of any Event of Default, to enter into and upon and take possession of the Premises or any part thereof, to complete any construction or repairs in progress thereon at the expense of Borrower, to lease the same, to collect and receive all Rents and to apply the same, less the necessary or appropriate expenses of collection thereof, either for the care, operation and preservation of the Premises or, at the election of Lender in its sole discretion, to a reduction of the Liabilities in such order as Lender may, in its sole discretion elect. Lender, in addition to the rights provided under the Notes and any of the other Loan Documents, is also hereby granted full and complete authority to enter upon the Premises, employ watchmen to protect the Goods and Improvements from depredation or injury and to preserve and protect the Mortgaged Assets, and to continue any and all outstanding contracts for the erection, completion or repair of improvements to the Premises, to make and enter into any contracts and obligations wherever necessary in its own name, and to pay and discharge all debts, obligations and liabilities incurred thereby, all at the expense of Borrower. All such expenditures by Lender shall be Liabilities hereunder. Upon the occurrence of any Event of Default, Lender may also exercise any or all rights or remedies under the Notes and any of the other Loan Documents.

3.3. Foreclosure; Receiver.

3.3.1. Upon the occurrence of any Event of Default, Lender shall have the right immediately or at any time thereafter to foreclose the lien of this Mortgage.

3.3.2. Upon the filing of any complaint for that purpose, the court in which such complaint is filed may, upon application of Lender, in Lender's sole and absolute discretion, appoint a receiver of the Premises pursuant to the Illinois Mortgage Foreclosure Law, as amended (Illinois Code Ann. 735 ILCS 5/15-1001, et seq.) (the "Mortgage Foreclosure Act"). Such appointment may be made either before or after sale, without choice; without regard to the solvency or insolvency, at the time of application for each receiver, of the person or persons, if any, liable for the payment of the indebtedness secured hereby; without regard to the value of the Premises at such time and whether or not the same is then occupied as a homestead; without bond being required of the applicant; and Lender hereunder or any employee or agent thereof may be appointed as such receiver. Such receiver shall have all powers and duties prescribed by the Mortgage Foreclosure Act, including the power to take possession, control and care of the Premises and to collect all rents, issues, deposits, profits and avails thereof during the pendency of such foreclosure suit and apply all funds received toward the indebtedness secured by this Mortgage, and in the event of a sale and a deficiency where Borrower has not waived its statutory rights of redemption, during the full statutory period of redemption, as well as during any further times when Borrower or its

95841167

UNOFFICIAL COPY

irrevocably appointed the true and lawful attorney-in-fact of Borrower, in its name and stead, to make all necessary transfers of property thus sold, and for that purpose Lender may execute and deliver, for and in the name of Borrower, all necessary instruments of assignment and transfer, Borrower hereby ratifying and confirming all that said attorney-in-fact shall lawfully do by virtue hereof.

3.3.5. In the case of any sale of the Premises pursuant to any judgment or decree of any court at public auction or otherwise, Lender may become the purchaser, and for the purpose of making settlement for or payment of the purchase price, shall be entitled to deliver over and use the Notes and any claims for the debt in order that there may be credited as paid on the purchase price the amount of the debt. In case of any foreclosure of this Mortgage (or the commencement of or preparation therefor) in any court, all expenses of every kind paid or incurred by Lender for the enforcement, protection or collection of this security, including court costs, attorneys' fees, stenographers' fees, costs of advertising, and costs of title insurance and any other documentary evidence of title, shall be paid by Borrower.

3.4. Remedies for Leases and Rents.

3.4.1. If any Event of Default shall occur, then, whether before or after institution of legal proceedings to foreclose the lien of this Mortgage or before or after the sale thereunder, Lender shall be entitled, in its discretion, to do all or any of the following:

(a) enter and take actual possession of the Premises, the Rents, the Leases and other Mortgaged Assets relating thereto or any part thereof personally, or by its agents or attorneys, and exclude Borrower therefrom;

(b) enter upon and take and maintain possession of all of the documents, books, records, papers and accounts of Borrower relating thereto;

(c) as attorney-in-fact or agent of Borrower, or in its own name as mortgagee and under the powers herein granted, hold, operate, manage and control the Premises, the Rents, the Leases and other Mortgaged Assets relating thereto and conduct the business, if any, thereof (including entering into new leases of the Premises, or any part thereof, under such terms and conditions as Lender, in its sole and absolute discretion, may elect) either personally or by its agents, contractors or nominees, with full power to use such measures, legal or equitable, as in its discretion or in the discretion of its successors or assigns may be deemed proper or necessary to enforce the payment of the Rents, the Leases and other Mortgaged Assets relating thereto (including actions for the recovery of rent, actions in forcible detainer and actions in distress of rent);

95841157

UNOFFICIAL COPY

(d) cancel or terminate any Lease or sublease for any cause or on any ground which would entitle Borrower to cancel the same;

(e) elect to disaffirm any Lease or sublease made subsequent hereto or subordinated to the lien hereof;

(f) make all necessary or proper repairs, decoration, renewals, replacements, alterations, additions, betterments and improvements to the Premises that, in its reasonable discretion, may seem appropriate;

(g) insure and reinsure the Mortgaged Assets for all risks incidental to Lender's possession, operation and management thereof; and

(h) receive all such Rents and proceeds, and perform such other acts in connection with the management and operation of the Mortgaged Assets, as Lender in its sole discretion may deem necessary or desirable.

3.4.2. Borrower hereby grants Lender full power and authority to exercise each and every one of the rights, privileges and powers contained herein at any and all times after any Event of Default without notice to Borrower or any other person. Lender, in the exercise of the rights and powers conferred upon it hereby, shall have full power to use and apply the Rents to the payment of or on account of the following, in such order as it may, in its sole and absolute discretion, determine: (i) to the payment of the operating expenses of the Premises, including the cost of management and leasing thereof (which shall include reasonable compensation to Lender and its agents or contractors, if management be delegated to agents or contractors, and it 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; (ii) to the payment of Impositions, charges and special assessments, the costs of all repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements of the Mortgaged Assets, including the cost from time to time of installing, replacing or repairing the Mortgaged Assets, and of placing the Mortgaged Assets in such condition as will, in the judgment of Lender, make it readily rentable; (iii) to the payment of any liabilities; and (iv) to the payment of any other cost or expense required or permitted hereunder.

3.4.3. The entering upon and taking possession of the Premises, or any part thereof, and the collection of any Rents and the application thereof as aforesaid shall not cure or waive any default theretofore or thereafter occurring or affect any notice or default hereunder or invalidate any act done pursuant to any such default or notice, and, notwithstanding continuance in possession of the Premises or any part thereof by Lender or a receiver, and the collection, receipt and application of the Rents, Lender shall be entitled to exercise every right provided for in this Mortgage or by law or in equity upon or after the occurrence of an Event of Default.

UNOFFICIAL COPY

3.4.4. Any of the actions referred to in this Section 3.4 may be taken by Lender irrespective of and without regard to the adequacy of the security for the Liabilities.

3.5. Personal Property.

3.5.1. Whenever there exists an Event of Default hereunder, Lender may exercise from time to time any rights, powers and remedies available to it under applicable law and as may be provided in this Mortgage, the Notes and the other Loan Documents upon default in the payment of any indebtedness. Borrower shall, promptly upon request by Lender, assemble the Mortgaged Assets and make it available to Lender at such place or places reasonably convenient for both Lender and Borrower, as Lender shall designate. Any notification of intended disposition required by law of any of the Mortgaged Assets shall be deemed reasonably and properly given if given at least ten (10) days before such disposition.

3.5.2. Without limiting the generality of the provisions of Section 3.5.1, whenever there exists an Event of Default hereunder, Lender may, with respect to so much of the Mortgaged Assets as is personal property under applicable law, to the fullest extent permitted by applicable law, without further notice, advertisement, hearing or process of law of any kind: (i) notify any person obligated on the Mortgaged Assets to perform directly for Lender its obligations thereunder, (ii) enforce collection of any of the Mortgaged Assets by suit or otherwise, and surrender, release or exchange all or any part thereof or compromise or extend or renew (or any period (whether or not longer than the original period) any obligations of any nature of any party with respect thereto, (iii) endorse any checks, drafts or other writings in the name of Borrower to allow collection of the Mortgaged Assets, (iv) take control of any proceeds of the Mortgaged Assets, (v) enter upon any premises where any of the Mortgaged Assets may be located and take possession of and remove such Mortgaged Assets, (vi) sell any or all of the Mortgaged Assets, free of all rights and claims of Borrower therein and thereto, at any public or private sale, and (vii) bid for and purchase any or all of the Mortgaged Assets at any such sale. Any proceeds of any disposition by Lender of any of the Mortgaged Assets may be applied by Lender to the payment of expenses in connection with the Mortgaged Assets, including reasonable attorneys' fees and legal expenses, and any balance of such proceeds shall be applied by Lender toward the payment of such of the Liabilities and in such order of application as Lender may from time to time elect.

3.5.3. Lender may exercise from time to time any rights and remedies available to it under the Uniform Commercial Code or other applicable law as in effect from time to time or otherwise available to it under applicable law. Borrower hereby expressly waives presentment, demand, notice of dishonor, protest and notice of protest in connection with the Notes and, to the fullest extent permitted by applicable law, any and all other notices, demands, advertisements, hearings or process of law in connection with the exercise by Lender of any of its rights and remedies hereunder. Borrower hereby

UNOFFICIAL COPY

constitutes Lender its attorney-in-fact with full power of substitution to take possession of the Mortgaged Assets upon any Event of Default and, as Lender in its sole discretion deems necessary or proper, to execute and deliver all instruments required by Lender to accomplish the disposition of the Mortgaged Assets; this power of attorney is a power coupled with an interest and is irrevocable while any of the Liabilities are outstanding.

3.6. No Liability on Lender. Notwithstanding anything contained herein, Lender shall not be obligated to perform or discharge, and does not hereby undertake to perform or discharge, any obligation, duty or liability of Borrower and Borrower shall and does hereby agree to indemnify against and hold Lender harmless of and from any and all liabilities, losses or damages which Lender may incur or pay under or with respect to any of the Mortgaged Assets 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 obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in any of the Mortgaged Assets or in any of the contracts, documents or instruments evidencing or creating any of the Mortgaged Assets unless such liability, claim, cost or demand is caused solely by Lender's willful misconduct. Lender 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, injury or death to any tenant, licensee, employee, stranger or other person. No liability shall be enforced or asserted against Lender in its exercise of the powers herein granted to it, and Borrower expressly waives and releases any such liability. Should Lender incur any such liability, loss or damage under any of the Leases or under or by reason hereof, or in the defense of any claims or demands, Borrower agrees to reimburse Lender immediately upon demand for the full amount thereof, including costs, expenses and reasonable attorneys' fees.

3.7. Accounts. Upon the occurrence of any Event of Default, Lender shall, to the fullest extent permitted by law, be entitled to appropriate and apply on the payment of the Liabilities (whether or not due and in any order of priority as may be selected by Lender in its sole and absolute discretion), any and all accounts and monies held in possession of Lender for the benefit of Borrower.

3.8. Remedies Cumulative. No remedy or right of Lender hereunder or under the Notes or any of the other Loan Documents or otherwise, or available under applicable law, shall be exclusive of any other right or remedy, but each such remedy or right shall be in addition to every other remedy or right now or hereafter existing under any such document or under applicable law. No delay in the exercise of, or omission to exercise, any remedy or right accruing on any Event of Default shall impair any such remedy or right or be construed to be a waiver of any such Event of Default or an acquiescence therein, nor shall it affect any subsequent Event of Default of the same or a different nature. Every such remedy or right may be exercised concurrently or independently, and when and as often as may be deemed expedient by Lender. All

UNOFFICIAL COPY

obligations of Borrower, and all rights, powers and remedies of Lender, expressed herein shall be in addition to, and not in limitation of, those provided by law or in the Notes or any other Loan Documents or any other written agreement or instrument relating to any of the Liabilities or any security therefor.

3.9. Compliance with the Illinois Mortgage Foreclosure Law.

3.9.1. In the event that any provision of this Mortgage shall be inconsistent with any provisions of the Mortgage Foreclosure Act, the provision of the Mortgage Foreclosure Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Mortgage Foreclosure Act.

3.9.2. Borrower and Lender shall have the benefit of all of the provisions of the Mortgage Foreclosure Act, including all amendments thereto which may become effective from time to time after the date hereof. In the event any provision of the Mortgage Foreclosure Act which is specifically referred to herein may be repealed, Lender shall have the benefit of such provision as most recently existing prior to such repeal, as though the same were incorporated herein by express reference.

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

IV. GENERAL

4.1. Permitted Acts. Borrower agrees that, without affecting or diminishing in any way the liability of Borrower or any other person (except any person expressly released in writing by Lender) for the payment or performance of any of the Liabilities or for the performance of any obligation contained herein or affecting the lien hereof upon the Mortgaged Assets or any part thereof, Lender may at any time and from time to time, without notice to or the consent of any person release any person liable for the payment or performance of any of the Liabilities; extend the time for, or agree to alter the terms of payment of, any indebtedness under the Notes or any of the Liabilities; modify or waive any obligation; subordinate, modify or otherwise deal with the lien hereof; accept additional security of any kind; release any Mortgaged Assets or other property securing any or all of the Liabilities; make releases of any portion of the Premises; consent to the making of any map or plat of the Premises; consent to the creation of a condominium regime on all or any part of the Premises or the submission of all or any part of the Premises to the provisions of any condominium act or any similar provisions of law of the state where the Premises are located, or to the creation of any easements on the

95841157

UNOFFICIAL COPY

Premises or of any covenants restricting the use or occupancy thereof; or exercise or refrain from exercising, or waive, any right Lender may have hereunder or under any of the other Loan Documents.

4.2. Legal Expenses. Borrower agrees to indemnify Lender, and hold Lender harmless, from and against all loss, damage and expense, including (without limitation) reasonable attorneys' fees, incurred in connection with any suit or proceeding in or to which Lender may pay or incur in connection with any suit or proceeding in or to which Lender may be made or become a party, which suit or proceeding does or may affect all or any portion of the Mortgaged Assets or the value, use or operation thereof or this Mortgage or the validity, enforceability, lien or priority hereof or of any of the Liabilities.

4.3. Loan Documents. Borrower covenants that it will timely and fully perform and satisfy all the terms, covenants and conditions of any and all Loan Documents under which it is obligated.

4.4. Security Agreement; Fixture Filing. This Mortgage, to the extent that it conveys or otherwise deals with personal property or with items of personal property which are or may become fixtures, shall also be construed as a security agreement under the Uniform Commercial Code as in effect in the state in which the Premises are located, and this Mortgage constitutes a financing statement filed as a fixture filing in the Official Records of the County Recorder of the County in which the Premises are located with respect to any and all fixtures included within the term "Mortgaged Assets" as used herein and with respect to any Goods or other personal property that may now be or hereafter become such fixtures.

4.5. Notices. Except as otherwise provided herein, all notices or other communications hereunder shall be sufficiently given and shall be deemed given when delivered by hand delivery, overnight courier service, telegram or facsimile followed by written confirmation, or on the second day after being sent, by registered or certified mail, first class postage prepaid, return receipt requested, addressed to the addresses set forth below, whether or not actually received or accepted by the addressee. Such notices shall be given as follows:

If to Borrower: c/o La Francaise Bakery, Inc.
111 North Northwest Avenue
Northlake, IL 60164
Attn: Paul Vadevoulis

with a copy to: Nudo, Poteracki & Associates
9575 West Higgins Road
Suite 801
Rosemont, IL 60018
Attn: Dennis S. Nudo, Esq.

UNOFFICIAL COPY

If to Lender: American National Bank and Trust Company of Chicago
33 North LaSalle Street
Chicago, IL 60609
Attn: Gerard Brosnan

with a copy to: Sachnoff & Weaver, Ltd.
30 South Wacker Drive
Suite 2900
Chicago, IL 60606
Attn: Cynthia Jared, Esq.

Any party hereto may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

4.6. Successors; Borrower; Gender. All provisions hereof shall inure to and bind the parties and their respective successors, vendees and assigns. The word "**Borrower**" shall include all persons claiming under or through Borrower and all persons liable for the payment or performance of any of the Liabilities whether or not such persons shall have executed the Notes or this Mortgage. Wherever used, the singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.

4.7. Care by Lender. Lender shall be deemed to have exercised reasonable care in the custody and preservation of any of the Mortgaged Assets in its possession if it takes such action for that purpose as Borrower requests in writing, but failure of Lender to comply with any such request shall not be deemed to be (or to be evidence of) a failure to exercise reasonable care, and no failure of Lender to preserve or protect any rights with respect to such Mortgaged Assets against prior parties, or to do any act with respect to the preservation of such Mortgaged Assets not so requested by Borrower, shall be deemed a failure to exercise reasonable care in the custody or preservation of such Mortgaged Assets.

4.8. Application of Payments. Any and all payments which may be received by or tendered to Lender made by Borrower or any other person (including, without limitation, any Guarantor now or hereafter existing) at any time or from time to time and which relate in any way to the sums advanced under the Notes or any other Secured Obligation, shall be applied in accordance with the terms of the Notes, absent an express provision in this Notes to the contrary.

4.9. Representation by Counsel. Borrower hereby represents and warrants that Borrower has been represented by competent counsel of its choice in the negotiation and execution of this Mortgage, the Notes and the other Loan Documents, and that Borrower has read and understood this Mortgage, the Notes and the other Loan

95841167

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Documents and intends to be bound hereby. In the event of an ambiguity or conflict herein or in any other Loan Document, no resumption shall be made against Lender as the preparer or drafter hereof or thereof.

4.10. Release of Mortgage. If Borrower, its successors or assigns, shall (i) timely pay all payments of principal, interest, penalties, fees and all other amounts due and owing according to the terms of the Notes, this Mortgage and the other Loan Documents, (ii) pay all sums (a) advanced in protecting the lien of this Mortgage (b) in payment of Impositions, (c) in payment of insurance premiums covering Improvements thereon, (d) in payment of principal and interest on prior liens, (e) in payment of expenses and attorney's fees herein provided for, and (f) in payment of all sums advanced for any other purpose authorized herein; and (iii) keep and perform all of the covenants and agreements contained in the Notes, herein and all other Loan Documents, then the Lender shall (notwithstanding any covenants or agreements in the Environmental Indemnity Agreement or any other Loan Document that survives payment of all principal and interest, release this Mortgage.

4.11. No Obligation on Lender. This Mortgage is intended only as security for the Liabilities. Anything herein to the contrary notwithstanding, (i) Borrower shall be and remain liable under and with respect to the Mortgaged Assets to perform all of the obligations assumed by it under or with respect to each thereof, (ii) Lender shall have no obligation or liability under or with respect to the Mortgaged Assets by reason of or arising out of this Mortgage, and (iii) Lender shall not be required or obligated in any manner to perform or fulfill any of the obligations of Borrower under, pursuant to or with respect to any of the Mortgaged Assets.

4.12. No Waiver: Writing. No delay on the part of Lender in the exercise of any right or remedy shall operate as a waiver thereof, and no single or partial exercise by Lender of any right or remedy shall preclude other or further exercise thereof or the exercise of any other right or remedy. The granting or withholding of consent by Lender to any transaction as required by the terms hereof shall not be deemed a waiver of the right to require consent to future or successive transactions.

4.13. Governing Law. The parties agree that the Federal or state courts in Illinois are a proper forum and shall be the only forum for the resolution of any and all disputes of any nature which may arise between the parties to this Mortgage. No party to the contract shall attempt to change venue from a court in Illinois to a court in any other jurisdiction. Whenever possible, each provision of this Mortgage shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Mortgage shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Mortgage.

95841167

UNOFFICIAL COPY

4.14. Waiver. Borrower, on behalf of itself and all persons now or hereafter interested in the Premises or the Mortgaged Assets, to the fullest extent permitted by applicable law hereby waives all rights under all appraisal, homestead, moratorium, valuation, exemption, stay, extension, and redemption statutes, laws or equities now or hereafter existing, and hereby further waives the pleading of any statute of limitations as a defense to any and all Liabilities secured by this Mortgage, and Borrower agrees that no defense, claim or right based on any thereof will be asserted, or may be enforced, in any action enforcing or relating to this Mortgage or any of this Mortgaged Assets. Without limiting the generality of the preceding sentence, Borrower, on its own behalf and on behalf of each and every person acquiring any interest in or title to the Premises subsequent to the date of this Mortgage, hereby irrevocably waives any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage or under any power contained herein or under any sale pursuant to any statute, order, decree or judgment of any court. Borrower, for itself and for all persons hereafter claiming through or under it or who may at any time hereafter become holders of liens junior to the lien of this Mortgage, hereby expressly waives and releases all rights to direct the order in which any of the Mortgaged Assets shall be sold in the event of any sale or sales pursuant hereto and to have any of the Mortgaged Assets and/or any other property now or hereafter constituting security for any of the Liabilities marshalled upon any foreclosure of this Mortgage or of any other security for any of said indebtedness.

4.15. No Merger. It being the desire and intention of the parties hereto that this Mortgage and the lien hereof do not merge in fee simple title to the Premises, it is hereby understood and agreed that should Lender acquire an additional or other interests in or to the Premises or the ownership thereof, then, unless a contrary intent is manifested by Lender as evidenced by an express agreement to that effect in an appropriate document duly recorded, this Mortgage and the lien hereof shall not merge in the fee simple title, toward the end that this Mortgage may be foreclosed as if owned by a stranger to the fee simple title.

4.16. Lender Not a Joint Venturer or Partner. Borrower and Lender acknowledge and agree that in no event shall Lender be deemed to be a partner or joint venturer with Borrower. Without limitation of the foregoing, Lender shall not be deemed to be such a partner or joint venturer on account of its becoming a mortgagee in possession or exercising any rights pursuant to this Mortgage or pursuant to any other instrument or document evidencing or securing any of the Liabilities, or otherwise.

4.17. Time of Essence. Time is declared to be of the essence in this Mortgage, the Notes, and any Loan Documents and of every part hereof and thereof.

4.18. WAIVER OF TRIAL BY JURY. BORROWER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS MORTGAGE, THE NOTES OR THE OTHER LOAN

95841157

UNOFFICIAL COPY

DOCUMENTS OR ANY COURSE OF CONDUCT, COURSE OF DEALINGS, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF EITHER PARTY. BORROWER HEREBY EXPRESSLY ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT FOR LENDER TO ACCEPT THIS MORTGAGE AND TO MAKE THE LOAN SECURED HEREBY AND BY THE OTHER LOAN DOCUMENTS.

4.19. It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the warranties, indemnities, representations, covenants, undertakings and agreements herein made on the part of the Trustee hereunder, while in form purporting to be the warranties, indemnities, representations, covenants, undertakings and agreements of said Trustee are nevertheless each and every one of them, made and intended not as personal warranties, indemnities, representations, covenants, undertaking and agreements by said Trustee or for the purpose of or with the intention of binding said Trustee personally, and this instrument is executed and delivered by said Trustee not in its own right, but solely in the exercise of the powers conferred upon it as Trustee; and that no personal liability or personal responsibility is assumed by nor shall at any time be asserted or enforceable against the American National Bank and Trust Company of Chicago on account of this instrument or on account of any warranty, indemnity, representation, covenant, undertaking or agreement of said Trustee in this instrument contained, either expressed or implied, all such personal liability, if any, being expressly waived and released.

COOK County Clerk's Office

95841157

UNOFFICIAL COPY

IN WITNESS WHEREOF, the parties have executed this Amendment as of September 15, 1995.

AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, not personally but solely as Trustee under Trust Agreement dated September 1, 1991 and known as Trust No. 114488-00

ATTEST:

By: [Signature]
Name: G. WISPIZYK
Title: ASSISTANT

By: [Signature]
Name: P. JOHANSEN
Title: VP

LA FRANCAISE BAKERY, INC.

By: [Signature]
Paul Vadevoulis, President

ACCEPTED:

AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO

By: [Signature]
Name: GERARD FROUJAN
Title: V.P.

UNOFFICIAL COPY

EXHIBIT A

LEGAL DESCRIPTION

That part of the Southwest 1/4 of Fractional Section 31, Township 40 North, Range 12 East of the Third Principal Meridian, bounded and described as follows:

Commencing at the Southwest corner of the Southwest 1/4 of said Fractional Section 31; thence North 00 degrees, 00 minutes, 00 seconds East, along the West line of the Southwest 1/4 of said Fractional Section 31, a distance of 99.65 feet to a point on the North right of way line of State Bond Issue Route 64 (commonly known as North Avenue); thence North 88 degrees, 20 minutes, 15 seconds East, along said North right of way line of State Bond Issue Route 64, a distance of 555.85 feet to the Southwest corner of a certain parcel of land conveyed to Burny Brothers, Inc. by the Chicago and North Western Railway Company by Deed dated April 1, 1960; thence Northerly along the Westerly line of said Burny Brothers, Inc. property, said line also being the Easterly line of Access Road "C", the following 5 courses and distances: North 00 degrees, 03 minutes, 45 seconds East, a distance of 43.52 feet to a point of curvature; thence Northwesterly, along a curve convex Northeasterly and having a radius of 192.0 feet, a distance of 143.73 feet, more or less, to a point of tangency; thence North 42 degrees, 49 minutes, 45 seconds West, a distance of 115.47 feet to a point of curvature; thence Northwesterly along a curve convex Southwesterly and having a radius of 188.0 feet, a distance of 138.66 feet to a point of tangency; thence North 00 degrees, 34 minutes, 15 seconds West, a distance of 206.35 feet to the Northwest corner of said Burny Brothers, Inc. property for a point of beginning; thence Northerly along the Easterly line of Access Road "C", the following 2 courses and distances: thence North 00 degrees, 34 minutes, 15 seconds West, a distance of 563.37 feet to a point of curvature; thence Northerly, along a curve convex Easterly and having a radius of 7,542.0 feet, a distance of 18.96 feet to the Southwest corner of a certain parcel of land conveyed to Chrysler Corporation by the Chicago and North Western Railway Company by deed dated June 10, 1964; thence North 90 degrees, 00 minutes, 00 seconds East, along the South line of said Chrysler Corporation property, a distance of 868.16 feet to a point distant 150 feet Westerly of, as measured at right angles from, the center line of Yard Track No. 834, as then existing, of the Chicago and North Western Railway Company's Proviso Yard; thence South 4 degrees, 16 minutes, 49 seconds West, along a line parallel with and 150 feet Westerly of (as measured at right angles from) said center line of Yard Track No. 834, a distance of 560.07 feet to a point on the North line of said Burny Brothers, Inc. property; thence South 88 degrees, 20 minutes, 15 seconds West, along the North line of said Burny Brothers, Inc. property, a distance of 820.38 feet (deed distance 820.52 feet) to the point of beginning, in Cook County, Illinois.

Permanent Index Number: 12-31-301-028

Volume: 070

111 N. Northwest Avenue, Northlake, IL

95841167

UNOFFICIAL COPY

EXHIBIT B

<u>NOTES</u>	<u>FACE AMOUNT</u>	<u>PAYMENTS</u>	<u>MATURITY DATE</u>
Revolving Line of Credit	\$3,000,000	Interest only	February 15, 1996
Real Estate Note 1	\$3,131,725	\$37,000 <u>plus</u> interest	April 30, 1997
Real Estate Note 2	\$ 269,400	Interest only	April 30, 1997
First Equipment Loan	\$1,067,622.61	Interest only	June 30, 1997
Second Equipment Loan	\$ 436,094.35	Interest only	June 30, 1997
Third Equipment Loan	\$ 500,000	Interest only	February 15, 1996

Each Note bears interest at the rate of .5% plus the Prime Rate, announced from time to time by American National Bank and Trust Company of Chicago (the "**Interest Rate**"). Upon the occurrence of an Event of Default, the Notes bear interest at the rate of four percent (4%) plus the Interest Rate (the "**Default Rate**"). The maturity dates of the Notes may be extended from time to time to a date not later than June 30, 1997 without modification of this Mortgage.

95841167

UNOFFICIAL COPY

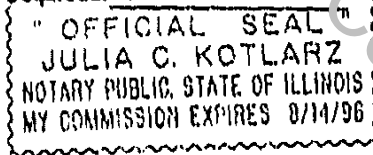
STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

The Undersigned, a Notary Public within and for said County, in the State aforesaid, duly commissioned and acting, do hereby certify that on this 29th day of November, 1995, personally appeared before me Gerard P. Blazek, the VICE President of **American National Bank and Trust Company of Chicago**, to me personally well known and known to be the person who signed the foregoing instrument, and who, being by me duly sworn, stated and acknowledged that he is the VICE President of said corporation and that he signed and delivered the same on behalf of said corporation with authority, as his/her and its free and voluntary act and deed for the uses and purposes therein mentioned and set forth.

WITNESS my hand and seal as such Notary Public the day and year in this certificate above written.

Julia C. Kotlarz
Notary Public

My commission expires:



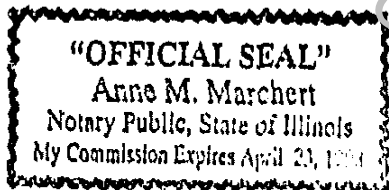
95841157

UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

The Undersigned, a Notary Public within and for said County, in the State aforesaid, duly commissioned and acting, do hereby certify that on this NOV 22 1995 day of NOV 22 1995, 1995, personally appeared before me P. Johnson, the VICE President and Asst secretary of American National Bank and Trust Company of Chicago, not individually but solely as Trustee under Trust Agreement dated September 1, 1991 and known as Trust Number 114488-00, to me personally well known and known to be the persons who signed the foregoing instrument, and who, being by me duly sworn, stated and acknowledged that they are the VICE President and ASST SECRETY, respectively, of said TRUSTEE, and that they signed and delivered the same in behalf of TRUSTEE, not individually but solely as trustee, aforesaid, with authority, as their and its free and voluntary act and deed for the uses and purposes therein mentioned and set forth.

WITNESS my hand and seal as such Notary Public the day and year in this certificate above written.



Anne M. Marchert
Notary Public

My commission expires: _____

Notary Public, State of Illinois
Cook County Clerk's Office

95841167