

UNOFFICIAL COPY

97527052

. DEPT-01 RECORDING 187.50
. T#0009 TRAN 9811 07/22/97 15:12:00
. 46162 + SK * -97-527052
. COOK COUNTY RECORDER

Loan Number 397

Property of Cook County Clerk's Office

MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT

8750
B

THIS INDENTURE is made as of June 9, 1997, by American National Bank and Trust Company of Chicago, not personally but as Trustee under Trust Agreement dated January 11 1982 and known as Trust No. 25-5197, having an office located at 33 N. LaSalle Street, Chicago, IL (the "Trustee"), and 3937 North Clarendon, LLC, and Illinois limited liability company (the "Beneficiary", and together with Trustee, the "Mortgagor"), for the benefit of LASALLE BANK FSB, having an office at 8303 W. Higgins Rd., 6th Floor, Chicago, Illinois 60631 (the "Mortgagee").

WITNESSETH:

WHEREAS, Mortgagor is justly indebted to Mortgagee in the principal sum of One Hundred Seventeen Thousand Three Hundred Fifty Three and no/100 DOLLARS (\$17,353.00), evidenced by that certain Installment Note of the Mortgagor of even date herewith, made payable to the order of and delivered to Mortgagee, in and by which Installment Note the Mortgagor promises to pay the principal sum, together with interest thereon on the balance of principal thereon from time to time outstanding and unpaid at the rate and at the times specified in the Installment Note on or before August 15, 1998 (such note and any and all notes issued in renewal thereof or in substitution or replacement therefor are hereinafter referred to as the "Note").

THIS DOCUMENT WAS PREPARED BY
AND AFTER RECORDING RETURN TO:

PERMANENT REAL ESTATE TAX
IDENTIFICATION NO.:

Laura Kenny
LaSalle Bank FSB
8303 West Higgins Road, 6th Floor
Chicago, Illinois 60631-2941

14-21-100-003

PROPERTY ADDRESS:

3937 N. Clarendon
Chicago, IL



0108385/m/1
1/62

UNOFFICIAL COPY

Each installment shall be paid at such place as the holder of the Note may, from time to time, in writing appoint, and in the absence of such appointment, then at the office of LaSalle Bank FSB, 8303 West Higgins Road, 6th Floor, Chicago, Illinois 60631-2941.

NOW, THEREFORE, in consideration of the debt evidenced by the Note and to secure the payment of all principal and interest evidenced by, and all other amounts owing pursuant to the terms of, the Note in accordance with the terms, provisions and limitations of the Note, the Mortgage, and all other documents executed in connection therewith (collectively with the Note and the Mortgage, the "Loan Documents"), including any and all extensions, modifications and renewals of the foregoing indebtedness, and the performance of the covenants and agreements contained in the Note, Mortgage and other Loan Documents to be performed by Trustee and/or Beneficiary, and any other indebtedness or liability of Trustee and/or Beneficiary to Lender, whether direct or indirect, joint or several, absolute or contingent, now or hereafter existing, however created or arising and however evidenced, and also in consideration of the sum of One Dollar (\$1.00) in hand paid, the receipt whereof is hereby acknowledged, Mortgagor does by these presents GRANT, MORTGAGE and CONVEY unto the Mortgagee, its successors and assigns, the following:

(a) All that certain described real estate and all of its estate, right, title and interest therein, situate, lying and being in the City of Chicago, County of Cook, State of Chicago, which is more specifically described on Exhibit "A" attached hereto, which, with the property hereinafter described, is referred to herein as the "Premises";

(b) All improvements, tenements, easements, fixtures, and appurtenances thereto belonging, and all rents, issues and profits thereof for so long and during all such times as Mortgagor may be entitled thereto (which are pledged primarily and on a parity with said real estate and not secondarily);

(c) If and to the extent owned by Mortgagor, all fixtures, fittings, furnishings, appliances, apparatus, equipment and machinery including, without limitation, all gas and electric fixtures, radiators, heaters, engines and machinery, boilers, ranges, ovens, elevators and motors, bathtubs, sinks, water closets, basins, pipes, faucets and other air-conditioning, plumbing, and heating fixtures, mirrors, mantles, refrigerating plants, refrigerators, iceboxes, dishwashers, carpeting, furniture, laundry equipment, cooking apparatus and appurtenances, and all building material, supplies and equipment now or hereafter delivered to the Premises and intended to be installed therein; all other fixtures and personal property of whatever kind and nature at present contained in or hereafter placed in any building standing on said Premises; such other goods, equipment, chattels and personal property as are usually furnished by landlords in letting other premises of the character of the Premises; and all renewals or replacements thereof or articles in substitution thereof; and all proceeds and profits thereof and all of the estate, right, title and interest of the Mortgagor in and to all property of any nature whatsoever, now or hereafter situated on the Premises or intended to be used in connection with the operation thereof;

(d) All of the right, title and interest of Mortgagor in and to any fixtures or personal property subject to a lease agreement, conditional sale agreement, chattel mortgage, or security agreement, and all deposits made thereon or therefor, together with the benefit of any payments now or hereafter made thereon;

(e) All leases and use agreements of machinery, equipment and other personal property of Mortgagor in the categories hereinabove set forth, under which Mortgagor is the lessee of, or entitled to use, such items;

97527052

UNOFFICIAL COPY

(f) All rents, income (including all revenues, receipts, income, accounts, accounts receivable and other receivables including, without limitation, revenues, receipts, income, receivables and accounts relating to or arising from rentals, rent equivalent income, income and profits from guest rooms, meeting rooms, food and beverage facilities, vending machines, telephone and television systems, guest laundry, the provision or sale of other goods and services, and any other items of revenue, receipts or other income as identified in the Uniform System of Accounts for Hotels, 8th Edition, International Association of Hospitality Accountants (1986), as from time to time amended), profits, revenues, receipts, royalties, bonuses, rights, accounts, contract rights, general intangibles and benefits and guarantees under any and all leases, tenancies, licenses or other use agreements or arrangements now existing or hereafter created of the Premises or any part thereof (including any business conducted thereon) with the right to receive and apply the same to indebtedness due Mortgagee and Mortgagee may demand, sue for and recover such payments but shall not be required to do so;

(g) All judgments, awards of damages and settlements hereafter made as a result of or in lieu of any taking of the Premises or any part thereof or interest therein under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the Premises or the improvements thereon or any part thereof or interest therein, including any award for change of grade of streets;

(h) All proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims;

(i) Any monies on deposit with Mortgagee for the payment of real estate taxes or special assessments against the Premises or for the payment of premiums on policies of fire and other hazard insurance covering the collateral described hereunder or the Premises, and all proceeds paid for damage done to the collateral described hereunder or the Premises;

(j) All substitutions, replacements, additions and proceeds, including insurance and condemnation award proceeds, of any of the foregoing property; it being understood that the enumeration of any specific articles of property shall in no wise exclude or be held to exclude any items of property not specifically mentioned. All of the land, estate and property hereinabove described, real, personal and mixed, whether affixed or annexed or not (except where otherwise hereinabove specified) and all rights hereby conveyed and mortgaged are intended so to be as a unit and are hereby understood, agreed and declared to form a part and parcel of the real estate and to be appropriated to the use of the real estate, and shall be for the purposes of this Mortgage deemed to be real estate and conveyed and mortgaged hereby.

As to any of the property aforesaid which (notwithstanding the aforesaid declaration and agreement) does not so form a part and parcel of the real estate, this Mortgage is hereby deemed to be, as well, a Security Agreement under the Uniform Commercial Code in effect in the jurisdiction in which the Premises are located (hereinafter referred to as the "UCC") for the purpose of creating hereby a security interest in such property, which Mortgagor hereby grants to Mortgagee as Secured Party (as said term is defined in the UCC), securing said indebtedness and obligations and Mortgagee shall have in addition to its rights and remedies hereunder all rights and remedies of a Secured Party under the UCC. As to above personal property which the UCC classifies as fixtures, this instrument shall constitute a fixture filing and financing statement under the UCC.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Mortgagor covenants (i) that it is lawfully seized of the Premises, (ii) that the same are subject only to the liens, encumbrances, conditions, restrictions, easements, and other matters, rights or interests shown on Schedule B of the title policy delivered to Mortgagee in connection with the grant of this Mortgage, and (iii) that it has good right, full power and lawful authority to convey and mortgage the same and that it will warrant and forever defend said Premises and the quiet and peaceful possession of the same against the lawful claims of all persons whomsoever.

As used in this Mortgage, the term "indebtedness" shall mean and include the principal sum evidenced by said Note, together with all interest and late charges thereon, any other payments due to the Mortgagee thereunder, and all other sums at any time secured by this Mortgage. Further, as used in this Mortgage, the term "Note" shall mean and include any renewals, modifications, extensions, amendments and replacements thereof.

TO HAVE AND TO HOLD the Premises unto Mortgagee, its successors and assigns, forever for the purposes and uses herein set forth, free from all rights and benefits under the Homestead Exemption Laws of the State of Illinois, which said rights and benefits Mortgagee does hereby expressly release and waive.

IT IS FURTHER UNDERSTOOD AND AGREED THAT:

Maintenance, Repair and Restoration of Improvements, Payment of Prior Liens, etc.

1. Mortgagor shall: (a) promptly repair, restore or rebuild any buildings or improvements now or hereafter on the Premises which may become damaged or be destroyed; (b) keep said Premises in good condition and repair, without waste, and free from mechanics' liens or other liens or claims for lien not expressly subordinated to the lien hereof, other than any such liens which are being contested in a diligent and good faith manner by appropriate proceedings; (c) pay when due any indebtedness which may be secured by a lien or charge on the Premises superior to the lien hereof, and upon request exhibit satisfactory evidence of the discharge of such prior lien to Mortgagee; (d) complete within a reasonable time any building or buildings now or at any time in process of erection upon said Premises; (e) comply with all requirements of law, municipal ordinances, or restrictions of record with respect to the Premises and the use thereof; (f) make no alterations in said Premises; (g) suffer or permit no change in the general nature of the occupancy of the Premises, without Mortgagee's prior written consent; (h) initiate or acquiesce in no zoning variation or reclassification, without Mortgagee's prior written consent; and (i) pay each item of indebtedness secured by this Mortgage when due according to the terms hereof or of said Note.

Payment of Taxes

2. Mortgagor shall pay, before any penalty attaches, all general taxes, and shall pay special taxes, special assessments, water charges, sewer service charges, and other charges against the Premises when due, and shall, upon written request, furnish to Mortgagee duplicate receipts therefor.

Tax Deposits

3. Mortgagor covenants and agrees to deposit with Mortgagee at the office of Mortgagee set forth on the first page of this Mortgage, on a monthly basis until the indebtedness secured by this Mortgage is

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

fully paid, a sum equal to one-twelfth of the last total annual taxes and general and/or special assessments (collectively, the "Taxes") for the last ascertainable year on said Premises (unless such Taxes are based upon assessments which exclude the improvements or any part thereof now constructed or to be constructed, in which event the amount of such deposits shall be based upon the Mortgagee's reasonable estimate as to the amount of Taxes to be levied and assessed). Such deposits shall be held without allowance for interest and shall be used for the payment of Taxes on said Premises next due and payable when they become due. If the funds so deposited are insufficient to pay any of the Taxes for any year when the same shall become due and payable, Mortgagor shall, within 10 days after receipt of demand therefor, deposit such additional funds as may be necessary to pay the Taxes in full. If the funds so deposited exceed the amount required to pay the Taxes for the year, the excess shall be applied on a subsequent deposit or deposits. Said deposits need not be kept separate and apart from other funds of Mortgagee.

Anything in this Paragraph 3 to the contrary notwithstanding, if the funds so deposited are insufficient to pay the Taxes or any installment thereof, Mortgagor will, not later than 30 days prior to the last day on which the same may be paid without penalty or interest, deposit with Mortgagee the full amount of any such deficiency.

If any Taxes shall be levied, charged, assessed or imposed upon or for the Premises, or any portion thereof, and if such Taxes shall also be a levy, charge, assessment or imposition upon or for any other premises not covered by the lien of this mortgage, then the computation of any amount to be deposited under this Paragraph 3 shall be based upon the entire amount of such Taxes, and Mortgagor shall not have the right to apportion the amount of any such taxes or assessments for the purpose of such computation.

Mortgagee's Interest In and Use of Deposits

4. In the event of an Event of Default hereunder or the Note secured hereby, Mortgagee may at its option, without being required to do so, apply any monies at the time of deposit pursuant to Paragraphs 3 and 5 hereof, on any of Mortgagor's obligations herein or in said Note contained, in such order and manner as Mortgagee may elect. When the indebtedness secured hereby has been fully paid, any remaining deposits shall be paid to Mortgagor or to the then owner of the Premises. A security interest within the meaning of the UCC is hereby granted to Mortgagee in and to any monies on deposit pursuant to Paragraphs 3 and 5 hereof, as additional security for the indebtedness hereunder and such monies shall be applied by Mortgagee for the purposes made hereunder and shall not be subject to the direction or control of Mortgagor; provided, however, that Mortgagee shall not be liable for any failure to apply to the payment of taxes, assessments and insurance premiums any amount so deposited unless Mortgagor, while not in default hereunder, shall have requested Mortgagee in writing to make application of such funds to the payment of the particular taxes, assessments and insurance premiums for payment of which they were deposited, accompanied by the bills for such taxes, assessments and insurance premiums. Mortgagee shall not be liable for any act or omission taken in good faith or pursuant to the instruction of any party but shall be liable only for its gross negligence or willful misconduct.

Insurance

5. Mortgagor shall keep all buildings and improvements now or hereafter situated on the Premises insured against loss or damage by policies of All Risk Replacement Cost Insurance with an Agreed Amount Endorsement and such other appropriate insurance as may be required by Mortgagee, all in form and

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

substance satisfactory to Mortgagee, including, without limitation, rent insurance, business interruption insurance, flood insurance (if the Premises lie within an area designated by an agency of the federal government as a flood risk area) and war risk insurance whenever in the opinion of Mortgagee such protection is necessary and such war risk insurance is obtainable from an agency of the United States Government. Mortgagor shall also provide liability insurance with such limits for personal injury and death and property damage as Mortgagee may require. All policies of insurance to be furnished hereunder shall be in forms, companies and amounts satisfactory to Mortgagee, each insurer to have a Best's rating of A+:XV, with mortgagee clauses attached to all policies in favor of and in form satisfactory to Mortgagee, including a provision requiring that the coverage evidenced thereby shall not be terminated or materially modified without 30 days' prior written notice to Mortgagee. Mortgagor shall deliver all policies, including additional and renewal policies, to Mortgagee, and, in the case of insurance about to expire, shall deliver renewal policies not less than 30 days prior to their respective dates of expiration. Upon Mortgagor's failure to comply with the requirements of this Paragraph, Mortgagee may, in its sole discretion but without any obligations hereunder so to do, effect any insurance required hereunder and pay the premiums due therefor, and any amounts so paid by Mortgagee shall become immediately due and payable by the Mortgagor with interest thereon at the Default Rate, and shall be secured by this Mortgage.

Mortgagor shall not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained hereunder unless Mortgagee is included thereon under a standard mortgagee clause acceptable to Mortgagee. Mortgagor shall immediately notify Mortgagee whenever any such separate insurance is taken out and shall promptly deliver to Mortgagee the policy or policies of such insurance.

Mortgagor covenants and agrees that Mortgagee may in its complete and sole discretion request that Mortgagor deposit on a monthly basis an amount equal to the premiums due on any such policies. Mortgagor further covenants and agrees that Mortgagor, beginning on the fifteenth day of the calendar month following such request by Mortgagee and continuing on the fifteenth day of each month thereafter, shall deposit with Mortgagee an amount equal to the premiums that will next become due and payable on such policies divided by the number of months to elapse prior to the date when such premiums become delinquent. No interest shall be payable on such deposits, and such deposits need not be kept in a separate account.

Adjustment of Losses With Insurer and Application of Proceeds of Insurance

6. In case of loss or damage by fire or other casualty, Mortgagee is authorized (a) to settle and adjust any claim under insurance policies which insure against such risks, or (b) to allow Mortgagor to agree with the insurance company or companies on the amount to be paid in regard to such loss. In either case, Mortgagee is authorized to collect and issue a receipt for any such insurance money. At the option of Mortgagee, such insurance proceeds shall be applied either to reduce the indebtedness secured hereby or to reimburse Mortgagor for the cost of rebuilding and restoration. Irrespective of whether such insurance proceeds are used to reimburse Mortgagor for the cost of said rebuilding or restoration or not, and irrespective of whether such insurance proceeds are or are not adequate for such purpose, the buildings and improvements shall be so restored or rebuilt so as to be of at least equal value and substantially the same character as prior to such damage or destruction. If the cost of rebuilding, repairing or restoring the building and improvements can reasonably exceed the sum of \$25,000, then Mortgagee shall approve plans and specifications of such work before such work shall be commenced. In any case, where the insurance

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

proceeds are used for rebuilding and restoration, such proceeds shall be disbursed in the manner and under the conditions that the Mortgagee may require and upon Mortgagee being furnished with satisfactory evidence of the estimated cost of completion thereof and with architect's certificates, waivers of lien, contractor's and subcontractors' sworn statements and other evidence of cost and payments so that Mortgagee can verify that the amounts disbursed from time to time are represented by completed and in place work and that said work is free and clear of mechanics' lien claims. If the estimated cost of completion exceeds the amount of the insurance proceeds available, Mortgagor immediately shall, on written demand of Mortgagee, deposit with Mortgagee in cash the amount of such estimated excess cost. No payment made prior to the final completion of the work shall exceed ninety percent (90%) of the value of the work performed from time to time, and at all times the undisbursed balance of such proceeds remaining in the hands of the disbursing party shall be at least sufficient to pay for the cost of completion of the work free and clear of liens. Any surplus which may remain out of said insurance proceeds after payment of such cost of building or restoration shall, at the option of the Mortgagee, be applied on account of the indebtedness secured hereby or be paid to any party entitled thereto without interest.

Stamp Tax

7. If, by the laws of the United States of America, or of any state having jurisdiction over the Mortgagor, any tax is due or becomes due in respect of the issuance of the Note hereby secured, the Mortgagor covenants and agrees to pay such tax in the manner required by any such law. The Mortgagor further covenants to reimburse the Mortgagee for any sums which Mortgagee may expend by reason of the imposition of any tax on the issuance of the Note secured hereby.

Assignment of Leases and Rents

8. Mortgagor hereby assigns to Mortgagee all of Mortgagor's interest in all rents, issues and profits of the Property, as further security for the payment of the Note and other sums secured hereby. Mortgagor grants to Mortgagee the right to enter the Premises and to let the Premises, or any part thereof, and to apply said rents, issues, profits and proceeds, after payment of all charges and expenses, on account of the Note and other sums secured hereby. This assignment and grant shall continue in effect until the Note and other sums secured hereby are paid in full. Mortgagee hereby agrees not to exercise the right to enter the Premises for the purpose of collecting said rents, issues or profits and Mortgagor shall be entitled to collect and receive said rents, issues, profits and proceeds until the occurrence of an Event of Default by Mortgagor under the terms and provisions hereof; provided that any rents, issues and profits collected and received by Mortgagor after the occurrence of a default hereunder which is not cured within the applicable grace period provided hereby shall be deemed collected and received by Mortgagor in trust for Mortgagee and Mortgagor shall account to Mortgagee for the full amount of such receipts. Mortgagor agrees to apply said rents, issues and profits, whenever received, to payment of the Note and other sums secured hereby. The right of Mortgagor to collect and receive said rents, issues and profits in trust for Mortgagee during the continuance of any Event of Default by Mortgagor under the terms and provisions of this Mortgage may be revoked by Mortgagee's giving written notice of such revocation to Mortgagor.

Mortgagor will, from time to time after notice and demand, execute and deliver to Mortgagee, in form satisfactory to Mortgagee, further agreements evidencing its willingness to comply and its compliance with the provisions of this Section. Mortgagor shall pay Mortgagee the expenses incurred by Mortgagee in connection with the recording of any such agreement.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Effect of Extensions of Time

9. If the payment of said indebtedness or any part thereof is extended or varied or if any part of any security for the payment of the indebtedness is released or additional security is taken, all persons now or at any time hereafter liable therefor, or interested in said Premises, shall be held to assent to such extension, variation, or taking of additional security or release, and their liability and the lien and all provisions hereof shall continue in full force, the right of recourse against all such persons being expressly reserved by the Mortgagee, notwithstanding such extension, variation, taking of additional security or release.

Effect of Changes in Laws Regarding Taxation

10. In the event of the enactment after this date of any law of the state in which the Premises are located deducting from the value of the Premises for the purpose of taxation any lien thereon, or imposing upon the Mortgagee the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or the Mortgagee's interest in the Premises, or the manner of collection of taxes, so as to affect this Mortgage or the debt secured hereby or the holders thereof, then, and in any event, the Mortgagor, upon demand by the Mortgagee, shall pay such taxes or assessments, or reimburse the Mortgagee therefor, provided, however, that if in the opinion of counsel for the Mortgagee (a) it might be unlawful to require Mortgagor to make such payment or (b) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then and in such event, the Mortgagee may elect, by notice in writing given to the Mortgagor, to declare all of the indebtedness secured hereby to be and become due and payable sixty (60) days from the giving of such notice.

Mortgagee's Performance of Defaulted Acts

11. In the event of a default hereunder, Mortgagee may, but need not, make any payment or perform any act herein required of Mortgagor in any form and manner deemed expedient, and may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting said Premises or consent to any tax or assessment or cure any default of landlord in any lease of the Premises. All monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including attorneys' fees, and any other monies advanced by Mortgagee in regard to any stamp tax or any leases of the Premises or to protect the Premises and the lien hereof, shall be so much additional indebtedness secured hereby, and shall become immediately due and payable without notice and with interest thereon at the Default Rate. Inaction of Mortgagee shall never be considered as a waiver of any right accruing to it on account of any default hereunder.

UNOFFICIAL COPY

Mortgagee's Reliance on Tax Bills, Etc.

12. Mortgagee in making any payment hereby authorized: (a) relating to taxes and assessments, may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof; or (b) for the purchase, discharge, compromise or settlement of any other prior lien, may do so without inquiry as to the validity or amount of any claim for lien which may be asserted.

Financial Covenants

13. (a) Mortgagor shall maintain a Debt Service Ratio of at least 1.20 to 1.0 at all times while any portion of the indebtedness evidenced by the Note is unpaid. Debt Service Ratio shall mean an amount represented by a fraction, the numerator of which shall be an amount equal to the annual rental income of the Premises less annual normal operating expenses (including, but not limited to, expenses for heat, light, real estate taxes and maintenance of the Premises) and the denominator of which shall be the amount necessary to pay principal and interest under the Note for the year in which the amount represented by the numerator is calculated.

(b) On each anniversary of the date of the Note (or more frequently, if in the reasonable opinion of Mortgagee, Mortgagee requires the financial information specified in this subparagraph) while any portion of the indebtedness evidenced by the Note is outstanding, Mortgagor shall provide Mortgagee with personal financial statements on forms reasonably to be prescribed by Mortgagee, for each maker of the Note and each person who has guaranteed the repayment of the Note and the performance of the Mortgage covenants contained herein.

(c) Mortgagor shall provide Mortgagee with an annual operating statement (to be prepared in accordance with generally accepted accounting principles consistent with the previous years operating statements) for the Premises, which annual operating statement will indicate the total rental invoice for the Premises and the annual expenses therefor.

Acceleration of Indebtedness in Case of Default

14. The occurrence of any one or more of the following shall constitute a default under this Mortgage (herein, an "Event of Default"):

(a) default shall be made in the due and punctual payment of principal or interest of the Note secured hereby, or any payment due in accordance with the terms thereof; or

(b) default shall be made in the due observance or performance of any of the other covenants, agreements or conditions contained in the Note, this Mortgage or any other Loan Document; or

(c) default shall be made in the due payment, observance or performance of any of the covenants and agreements or conditions contained in any other agreements or financing arrangements now existing or hereafter entered into between Mortgagor and/or Beneficiary and Mortgagee; or

UNOFFICIAL COPY

(d) Trustee, Beneficiary or any guarantor of the Note secured hereby (herein a "Guarantor") shall file a petition seeking relief under the Federal Bankruptcy Code (11 U.S.C. 101 et seq.) or any similar law, state or federal, whether now or hereafter existing, or any answer admitting insolvency or inability to pay its or their debts, or fail to obtain a vacation or stay of involuntary proceedings within 30 days; or

(e) an order for relief shall be entered in an involuntary case against the Trustee, Beneficiary or a Guarantor, or a trustee or a receiver shall be appointed for the Trustee, Beneficiary or a Guarantor, or for all of the property of Trustee, Beneficiary or a Guarantor, or the major part thereof, in any involuntary proceeding, or any court shall have taken jurisdiction of the property of the Trustee, Beneficiary or a Guarantor, or the major part thereof, in any voluntary or involuntary proceeding for the reorganization, dissolution, liquidation or winding up of the Trustee, Beneficiary or a Guarantor and such trustee or receiver shall not be discharged or such jurisdiction relinquished or vacated or stayed on appeal or otherwise stayed within 30 days; or

(f) Trustee, Beneficiary or a Guarantor shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due, or shall consent to the appointment of a receiver or trustee or liquidator of all of its property or the major part thereof; or

(g) any event occurs or condition exists which constitutes an event of default under any other Loan Document; or

(h) an unpermitted transfer as described in Section 33 of this Mortgage shall occur.

Upon the occurrence of an Event of Default, the whole of the indebtedness hereby secured shall become, at the option of Mortgagee, immediately due and payable without notice to Mortgagor. If, while any insurance proceeds or condemnation awards are being held by Mortgagee to reimburse Mortgagor for the cost of rebuilding or restoration of buildings or improvements on the Premises, as set forth in Paragraph 6 or 23 hereof, Mortgagee shall be or become entitled to and shall accelerate the indebtedness secured hereby, then and in such event, Mortgagee shall be entitled to apply all such insurance proceeds and condemnation awards then held by it in reduction of the indebtedness hereby secured (less the amount thereof, if any, which is then currently payable for work completed and in place in connection with such rebuilding or restoration), and any excess held by it over the amount of indebtedness then due hereunder shall be returned to Mortgagor or any party entitled thereto without interest.

Foreclosure: Expense of Litigation

15. When the indebtedness hereby secured, or any part thereof, shall become due, whether by acceleration or otherwise, Mortgagee shall have the right to foreclose the lien hereof, for such indebtedness or part thereof. In any civil action to foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the order or judgment for sale all reasonable expenditures and expenses authorized by the Illinois Mortgage Foreclosure Law, 735 ILCS 5/15-1101 et seq., as from time to time amended (the "Act") and all other reasonable expenditures which may be paid or incurred by or on behalf of Mortgagee for attorneys' fees, appraiser's fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the order or judgment) of procuring all such abstracts of title, title searches and examinations, title insurance policies, Torrens certificates, and similar data and assurances with respect to title as Mortgagee may deem reasonably

UNOFFICIAL COPY

necessary either to prosecute such civil actions or to evidence to bidders at any sale which may be had pursuant to such order or judgment the true condition of the title to or the value of the Premises. All expenditures and expenses of the nature in this paragraph mentioned, and such expenses and fees as may be incurred in the protection of said Premises and maintenance of the lien of this Mortgage, including the fees of any attorney employed by Mortgagee in any litigation or proceeding affecting this Mortgage, said Note or said Premises, including probate, bankruptcy and appellate proceedings, or in preparations for the commencement or defense of any proceeding or threatened civil actions or proceeding, shall be immediately due and payable by Mortgagor, with interest thereon at the Default Rate and shall be secured by this Mortgage.

Compliance with Illinois Mortgage Foreclosure Law

16. (a) In the event that any provision in this Mortgage shall be inconsistent with any provision of the Act, the provisions of the 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 Act.

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

(c) Without limiting the generality of the foregoing, all reasonable expenses incurred by Mortgagee to the extent reimbursable under Sections 15-1510 and 15-1512 of the Act (or any successor provisions), whether incurred before or after any decree or judgment of foreclosure, and whether enumerated in Paragraph 15 of this Mortgage, shall be added to the indebtedness secured by this Mortgage or by the judgment of foreclosure.

Application of Proceeds of Foreclosure Sale

17. The proceeds of any foreclosure sale of the Premises shall be distributed and applied in the following order of priority: first, on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in the paragraphs 15 and 16(c) hereof; second, all other items which may under the terms hereof constitute secured indebtedness additional to that evidenced by the Note, with interest thereon as herein provided; third, all principal and interest remaining unpaid on the Note; and fourth, any overplus to Mortgagor, its successors or assigns, as their rights may appear.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Appointment of Receiver

18. Upon the occurrence of an Event of Default hereunder, Mortgagee shall, as a matter of right, without notice and without giving bond to Mortgagor or anyone claiming by, under or through it, and without regard to the solvency or insolvency of Trustee or Beneficiary or the then value of the Premises, be entitled to have a receiver appointed pursuant to the Act of all or any part of the Premises and the rents, issues and profits thereof, with such power as the court making such appointment shall confer, and Mortgagor hereby consents to the appointment of such receiver and shall not oppose any such appointment. Any such receiver may, to the extent permitted under applicable law, without notice, enter upon and take possession of the Premises or any part thereof by force, summary proceedings, ejectment or otherwise, and may remove Mortgagor or other persons and any and all property therefrom, and may hold, operate and manage the same and receive all earnings, income, rents, issues and proceeds accruing with respect thereto or any part thereof, whether during the pendency of any foreclosure or until any right of redemption shall expire or otherwise.

Mortgagee's Right of Possession in Case of Default

19. Upon the occurrence of an Event of Default hereunder, whether before or after the whole principal sum secured hereby is declared to be immediately due, or whether before or after the institution of legal proceedings to foreclose the lien hereof or before or after sale thereunder, forthwith, upon demand of Mortgagee, Mortgagor shall surrender to Mortgagee and Mortgagee shall be entitled to take actual possession of the Premises or any part thereof personally, or by its agent or attorneys, as for condition broken. In such event Mortgagee in its discretion may, in accordance with law, enter upon and take and maintain possession of all or any part of said Premises, together with all documents, books, records, papers and accounts of Mortgagor or then owner of the Premises relating thereto, and may exclude Mortgagor, its agents or servants, wholly therefrom and may as attorney in fact or agent of Mortgagor, or in its own name as Mortgagee and under the powers herein granted, hold, operate, manage and control the Premises and conduct the business, if any, thereof, either personally or by its agents, and 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 or security of the avails, rents, issues, and profits of the Premises, including actions for the recovery of rent, actions in forcible detainer and actions in distress for rent, and with full power: (a) to cancel or terminate any lease or sublease for any cause or on any ground which would entitle Mortgagor to cancel the same; (b) to elect to disaffirm any lease or sublease which is then subordinate to the lien hereof; (c) to extend or modify any then existing leases and to make new leases, which extensions, modifications and new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the indebtedness hereunder and beyond the date of the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor and all persons whose interests in the Premises are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from a foreclosure of this Mortgage, discharge of the mortgage indebtedness, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any purchaser; (d) to make all necessary or proper repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements to the Premises as it may deem judicious; (e) to insure and reinsure the same and all risks incidental to Mortgagee's possession, operation and management thereof; and (f) to receive all of such avails, rents, issues and profits; hereby granting full power and authority to exercise each and every of the rights, privileges and powers herein granted at any and all times hereafter, without notice to Mortgagor.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Mortgagee shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any leases. Mortgagor shall and does hereby agree to indemnify and hold Mortgagee harmless of and from any and all liability, loss or damage which Mortgagee may or might incur under said leases or under or by reason of the assignment thereof and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in said leases, excepting any of the foregoing which result from the gross negligence or willful misconduct of Mortgagee. Should Mortgagee incur any such liability, loss or damage, under said leases or under or by reason of the assignment thereof, or in the defense of any claims or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees, shall be secured hereby, and Mortgagor shall reimburse Mortgagee therefor immediately upon demand.

Nothing herein contained shall be construed as constituting Mortgagee a mortgagee in possession in the absence of the actual taking of possession of the Premises. The right to enter and take possession of the Premises and use any personal property therein, to manage, operate, conserve and improve the same, and to collect the rents, issues and profits thereof, shall be in addition to all other rights or remedies of Mortgagee hereunder or afforded by law, and may be exercised concurrently therewith or independently thereof. The expenses (including any reasonable receiver's fees, counsel fees, costs and agent's compensation) incurred pursuant to the powers herein contained shall be secured hereby, which expenses Mortgagor promises to pay upon demand together with interest at the rate applicable to the Note at the time such expenses are incurred. Mortgagee shall not be liable to account to Mortgagor for any action taken pursuant hereto other than to account for any rents actually received by Mortgagee. Without taking possession of the Premises, Mortgagee may, in the event the Premises become vacant or are abandoned, take such steps as it deems appropriate to protect and secure the Premises (including hiring watchmen therefor) and all reasonable costs incurred in so doing shall constitute so much additional indebtedness hereby secured payable upon demand with interest thereon at the Default Rate.

Application of Income Received by Mortgagee

20. Mortgagee, in the exercise of the rights and powers conferred herein and upon the occurrence of an Event of Default, shall have full power to use and apply the avails, rents, guest room receipts and income, issues and profits of the Premises to the payment of or on account of the following, in such order as Mortgagee may determine:

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

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

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

(c) to the payment of all repairs, decorating, renewals, replacements, alterations, additions, betterments, and improvements of the Premises and of placing the Premises in such condition as will, in the reasonable judgment of Mortgagee, make it readily rentable and otherwise in a condition which is comparable to the condition of the Premises preceding the occurrence of the default;

(d) to the payment of any indebtedness secured hereby or any deficiency which may result from any foreclosure sale.

Rights Cumulative

21. No right, power or remedy herein conferred upon or reserved to Mortgagee is intended to be exclusive of any other right, power or remedy, and each right, power and remedy herein conferred upon the Mortgagee is cumulative and in addition to every other right, power or remedy, express or implied, given now or hereafter existing, at law or in equity, and each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by the Mortgagee, and the exercise or the beginning of the exercise of one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy, and no delay or omission of the Mortgagee in the exercise of any right, power or remedy accruing hereunder or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any default or acquiescence therein.

Mortgagee's Right of Inspection

22. Mortgagee shall have the right to inspect the Premises at all reasonable times and access thereto shall be permitted for that purpose.

Condemnation

23. Mortgagor hereby assigns, transfers and sets over unto the Mortgagee the entire proceeds of any award or any claim for damages for any of the Premises taken or damaged under the power of eminent domain or by condemnation. At the option of Mortgagee, such condemnation proceeds shall be applied either to reduce the indebtedness secured hereby or to reimburse Mortgagor for the cost of rebuilding and restoration. Irrespective of whether such proceeds are made available for restoration or rebuilding, and irrespective of whether such proceeds are adequate for such purpose, the buildings and improvements shall be restored or rebuilt in accordance with plans and specifications to be submitted to and approved by the Mortgagee. In the event said proceeds are used for rebuilding or restoration, the proceeds of the award shall be disbursed in the manner and under the conditions that the Mortgagee may require and pay out in the same manner as provided in Paragraph 6 hereof for the payment of insurance proceeds toward the cost of rebuilding or restoration. In such event, if the estimated cost to complete rebuilding or restoration exceeds the proceeds of the condemnations awards, Mortgagor immediately shall, on written demand of the Mortgagee, deposit with the Mortgagee in cash the amount of such excess cost. Any surplus which may remain out of said award after payment of such cost of building or restoration shall, at the option of the Mortgagee, be applied on account of the indebtedness secured hereby or be paid to any party entitled thereto without interest.

UNOFFICIAL COPY

Release upon Payment and Discharge of Mortgagor's Obligations

24. Mortgagee shall release this Mortgage and the lien thereof by proper instrument upon payment and discharge of all indebtedness secured hereby at the cost and expense of the Mortgagor which may include payment of a reasonable release fee to Mortgagee for the execution of release documents.

Giving of Notice

25. All notices or other communications required or permitted hereunder shall be (a) in writing and shall be deemed to be given when either (i) delivered in person, (ii) three business days after deposit in a regularly maintained receptacle of the United States mail as registered or certified mail, postage prepaid, (iii) when received if sent by private courier service or by facsimile transmission, or (iv) on the day on which the party to whom such notice is addressed refuses delivery by mail or by private courier service and (b) addressed as follows:

If to Mortgagor:

3937 North Clarendon LLC
c/o Mr. Joseph Farago
2034 N. Clark Street
Chicago, IL 60614

If to Mortgagee:

LaSalle Bank FSB
8303 West Higgins Road
Sixth Floor
Chicago, IL 60631

or at such other place as any party hereto may by notice in writing designate as a place for service of notice, shall constitute service of notice hereunder.

Waiver of Notice

26. No action for the enforcement of the lien or of any provision hereof shall be subject to any defense which would not be good and available to the party interposing same in an action at law upon the Note hereby secured.

Waiver of Statutory Rights

27. Mortgagor shall not apply for or avail itself of any appraisal, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws," now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but hereby waives the benefit of such laws. Mortgagor for itself and all who may claim through or under it waives any and all right to have the property and estates comprising the Premises marshalled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Premises sold as an entirety. In the event of any sale made under or by virtue of this instrument, the whole of the Premises may be sold in one parcel as an entirety or in separate lots or parcels at the same or different times, all as the Mortgagee may determine.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Mortgagee shall have the right to become the purchaser at any sale made under or by virtue of this instrument and Mortgagee so purchasing at any such sale shall have the right to be credited upon the amount of the bid made therefor by Mortgagee with the amount payable to Mortgagee out of the net proceeds of such sale. In the event of any such sale, the Note and the other indebtedness hereby secured, if not previously due, shall be and become immediately due and payable without demand or notice of any kind. Mortgagor acknowledges that the Premises does not constitute agricultural real estate, as defined in Section 15-1201 of the Act (or any successor provision), or residential real estate, as defined in Section 15-1219 of the Act (or any successor provision). To the fullest extent permitted by law, Mortgagor, pursuant to Section 15-1601(b) of the Act (or any successor provision), hereby voluntarily and knowingly waives any and all rights of redemption on behalf of Mortgagor, and each and every person acquiring any interest in, or title to the Premises described herein subsequent to the date of this Mortgage, and on behalf of all other persons to the extent permitted by applicable law. Mortgagor does hereby further expressly waive, to the fullest extent now or hereafter permitted by law, all rights of reinstatement of this Mortgage pursuant to Section 15-1602 of the Act. Trustee hereby represents to Mortgagee that it has been directed in writing by the appropriate beneficiaries and holders of the power of direction of the trust estate to expressly waive all rights of redemption to the Premises and reinstatement of the loan secured hereby in the manner herein set forth.

Furnishing of Financial Statements to Mortgagee

28. Mortgagor shall keep and maintain books and records of account in which full, true and correct entries shall be made of all dealings and transactions relative to the Premises, which books and records of account shall be open to the inspection of Mortgagee and its accountants and other duly authorized representatives during business hours. Such books of record and account shall be kept and maintained in accordance with generally accepted accounting practice consistently applied.

Filing and Recording Fees

29. Mortgagor shall pay all filing, registration or recording fees, and all expenses incident to the execution and acknowledgement of this Mortgage and all federal, state, county, and municipal taxes, and other taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of said Note and this Mortgage.

Compliance with Laws, Environmental

30. The Premises and their present use comply, and at all times shall comply, with all applicable laws and governmental regulations including, without limitation, all federal, state and local laws pertaining to air and water quality, hazardous waste, waste disposal, air emissions and other environmental matters, all zoning and other land use matters, and utility availability.

Mortgagor shall take all actions necessary to cause the Premises to be kept free of any "Hazardous Materials". As used herein, "Hazardous Materials" means any above or underground storage tanks, flammables, explosives, accelerants, asbestos, radioactive materials, radon, urea formaldehyde foam insulation, lead-based paint, polychlorinated biphenyls, petroleum or petroleum based or related substances, hydrocarbons or like substances and their additives or constituents, methane, solid wastes, refuse, garbage, construction debris, rubble, hazardous materials, hazardous wastes, toxic substances or related materials, and including, without limitation, substances now or hereafter defined as "hazardous substances", "hazardous

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

materials", "toxic substances" or "hazardous wastes" in The Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. §9601, et seq.), as amended by the Superfund Amendments and Reauthorization Act of 1986 (P.L. 99-499, 42 U.S.C.). The Toxic Substance Control Act of 1976 as amended, (15 U.S.C. §2601 et seq.), The Resource Conservation and Recovery Act, as amended (42 U.S.C. §6901, et seq.), The Hazardous Materials Transportation Act, as amended (49 U.S.C. §1801, et seq.), The Clean Water Act, as amended (33 U.S.C. §1251, et seq.), The Clean Air Act, as amended (42 U.S.C. §7401 et seq.), The Illinois Environmental Protection Act, as amended (415 ILCS 5/1 et seq.), any so-called "Superfund" or "Superlien" law or any other applicable federal, state or local law, common law, code, rule, regulation, or ordinance, presently in effect or hereafter enacted, promulgated or implemented.

Mortgagor shall not cause or permit the Premises to be used to generate, manufacture, refine, transport, treat, store, handle, dispose of, transfer, produce, or process Hazardous Materials, nor shall Mortgagor cause or permit, as a result of any intentional or unintentional act or omission on the part of Mortgagor or any tenant, subtenant, occupant or other entity or person, a release of Hazardous Materials onto the Premises or onto any other property.

Mortgagor shall conduct and complete all investigations, studies, sampling and testing, and all remedial, removal and other actions necessary to clean up and remove all Hazardous Materials, on, under, from or affecting the Premises in accordance with all applicable federal, state, and local laws, ordinances, rules, regulations and policies, to the reasonable satisfaction of Mortgagee, and in accordance with the orders and directives of all federal, state and local governmental authorities.

Neither Mortgagor nor, to the best of Mortgagor's knowledge, any previous owner, occupier, or user of the Premises, has used, generated, stored or disposed of, on, under or about the Premises any Hazardous Materials. Further, the Premises do not contain, and, to the best of Mortgagor's knowledge, have not in the past contained, any asbestos containing material in friable form and there is no current or potential airborne contamination that would be caused by maintenance or tenant finish activities in any building located on the Premises. Mortgagor shall protect, indemnify and hold harmless Mortgagee, its directors, officers, employees, agents, successors and assigns, from and against any and all loss, damage, cost, expense or liability (including reasonable attorneys' fees and costs) directly or indirectly arising out of or attributable to the use, generation, manufacture, production, storage, release, threatened release, discharge, disposal or presence of Hazardous Materials on, under or about the Premises including without limitation (i) all foreseeable consequential damages; and (ii) the costs of any required or necessary repair, cleanup or detoxification of the Premises and the preparation and implementation of any closure, remedial or other plans as required by applicable law, regulation or ordinance or by any court or administrative order. This indemnity shall survive the reconveyance of the lien of this Mortgage, or the extinguishment of the lien by foreclosure, deed in lieu of foreclosure, or any other remedy exercised by Mortgagee upon a default hereunder.

92527052

UNOFFICIAL COPY

Security Agreement

31. Upon the occurrence of an Event of Default hereunder, Mortgagee, pursuant to the appropriate provisions of the UCC, shall have the option of proceeding as to both real and personal property in accordance with its rights and remedies with respect to the real property, in which event the default provisions of the UCC shall not apply. The parties agree that, in the event the Mortgagee shall elect to proceed with respect to the personal property collateral securing the indebtedness separately from the real property, ten (10) days notice of the sale of the personal property collateral shall be reasonable notice. The reasonable expenses of retaking, holding, preparing for sale, selling and the like incurred by the Mortgagee shall include, but not be limited to, reasonable attorneys' fees and legal expenses incurred by Mortgagee. Mortgagor agrees that, without the written consent of Mortgagee, the Mortgagor will not remove or permit to be removed from the Premises any of the personal property or fixtures securing the indebtedness except that so long as Mortgagor is not in default hereunder, Mortgagor shall be permitted to sell or otherwise dispose of such property when obsolete, worn out, inadequate, unserviceable or unnecessary for use in the operation of the Premises, upon replacing the same or substituting for the same other property at least equal in value to the initial value to that disposed of and in such a manner so that said other property shall be subject to the security interest created hereby and so that the security interest of the Mortgagee shall always be perfected and first in priority, it being expressly understood and agreed that all replacements, substitutions and additions to the property securing the indebtedness shall be and become immediately subject to the security interest of this Mortgage and covered hereby. The Mortgagor shall, from time to time, on request of the Mortgagee, deliver to the Mortgagee in reasonable detail an inventory of the personal property securing the indebtedness. The Mortgagor covenants and represents that all personal property securing the indebtedness now is, and that all replacements thereof, substitutions therefor or additions thereto, unless the Mortgagee otherwise consents, will be, free and clear of liens, encumbrances or security interest of others.

Indemnity

32. Mortgagor agrees to indemnify and hold harmless Mortgagee from and against any and all losses, liabilities, suits, obligations, fines, damages, judgments, penalties, claims, charges, costs and expenses (including reasonable attorneys' fees and disbursements) which may be imposed on, incurred or paid by or asserted against Mortgagee by reason or on account of, or in connection with, (i) any default hereunder or any default under the other loan documents given at any time to secure the payment of the Note secured hereby, (ii) Mortgagee's good faith and commercially reasonable exercise of any of its rights and remedies, or the performance of any of its duties, hereunder or under said other loan documents to which Mortgagor is a party, (iii) the construction, reconstruction or alteration of the Premises, (iv) any negligence or willful misconduct of Mortgagor, or any negligence or willful misconduct of any lessee of the Premises, or any of their respective agents, contractors, subcontractors, servants, employees, licensees or invitees, or (v) any accident, injury, death or damage to any person or property occurring in, on or about the Premises or any street, drive, sidewalk, curb or passageway adjacent thereto. Any amount payable to Mortgagee under this Paragraph shall be due and payable within ten (10) days after demand therefor and receipt by Mortgagor of a statement from Mortgagee setting forth in reasonable detail the amount claimed and the basis therefor, and such amounts shall bear interest at the Default Rate from and after the date such amounts are paid by Mortgagor until paid in full by Mortgagor.

Mortgagor's obligations under this Paragraph shall not be affected by the absence or unavailability of insurance covering the same or by the failure or refusal by any insurance carrier to perform any obligation on

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

its part under any such policy of covering insurance. If any claim, action or proceeding is made or brought against Mortgagor and/or Mortgagee which is subject to the indemnity set forth in this Paragraph, Mortgagor shall resist or defend against the same, if necessary in the name of Mortgagee, by attorneys for Mortgagor's insurance carrier (if the same is covered by insurance) or otherwise by attorneys approved by Mortgagee. Notwithstanding the foregoing, Mortgagee, in its reasonable discretion, may engage its own attorneys to resist or defend, or assist therein, and Mortgagor shall pay, or, on demand, shall reimburse Mortgagee for the payment of, the reasonable fees and disbursements of said attorneys.

Prohibition on Sale or Financing

33. Any sale, conveyance, assignment, pledge, hypothecation, mortgage, encumbrance, lease (other than for actual occupancy as consented to by Mortgagee as provided here'in) or other transfer of title to, or any interest in the Premises, or in the beneficial interest or power of direction in Trustee, or any portion thereof, or of any entity or any person owning, directly or indirectly, any interest therein (whether voluntary or by operation of law) without the Mortgagee's prior written consent shall be an Event of Default hereunder.

For the purpose of, and without limiting the generality of, this Paragraph, the occurrence at any time of any of the following events shall be deemed to be an unpermitted transfer of title to the Premises and therefore an Event of Default hereunder:

(a) if the Beneficiary is not an individual, any sale, conveyance, assignment or other transfer, directly or indirectly, of any ownership interest in the Beneficiary which results in any change in the identity of the individuals or entities previously owning any interest, legal or beneficial, in Beneficiary; or

(b) if the Beneficiary is not an individual, the grant of a security interest in any ownership interest of any individual or entity, directly or indirectly, owning an interest in or controlling Beneficiary which could result in a change in the identity of the individuals or entities previously owning an interest in or controlling Beneficiary. For the purpose hereof, the terms "control" or "controlling" shall mean the possession of the power to direct, or cause the direction of, the management and policies of Mortgagor by contract, voting of securities or otherwise.

It is understood and agreed that the indebtedness secured hereby was created solely due to the financial sophistication, creditworthiness, background and business sophistication of Mortgagor, and Mortgagee continues to rely upon same as the means of maintaining the value of the Premises. It is further understood and agreed that any junior financing placed upon the Premises or the improvements located thereon, or upon the interests of Mortgagor may divert funds which would otherwise be used to pay the indebtedness secured hereby, and could result in acceleration and/or foreclosure by any such junior lienor. Any such action would force the Mortgagee to take measures, and incur expenses, to protect its security, and would detract from the value of the Premises mortgaged hereby, and impair the rights of the Mortgagee granted hereunder. Without limitation by the foregoing, the Mortgagor shall not incur any additional indebtedness, whether secured or unsecured, without the prior written consent of Mortgagee.

Any consent by Mortgagee to, or any waiver of, any event which is prohibited under this Paragraph shall not constitute a consent to, or waiver of, any right, remedy or power of Mortgagee upon a subsequent default.

9-15-27052

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Future Advances

34. Without limiting the generality of any other provision hereof, the indebtedness of Mortgagor hereunder shall include (a) all existing indebtedness of Mortgagor to Mortgagee evidenced by the Note and all renewals, extensions, modifications and replacements thereof, and (b) all future advances that may be subsequently made by Mortgagee and all renewals, extensions, modifications and replacements thereof. Mortgagor hereby agrees to execute any and all supplemental notes, agreements or other documents as Mortgagee may reasonably request to evidence such future advances, which such supplemental notes, agreements or other documents shall be similar in form and substance to the existing notes, agreements and other documents from Mortgagor in favor of Mortgagee.

Enforceability

35. This Mortgage and the indebtedness arising hereunder shall be governed by, and construed in accordance with, the internal laws of the State of Illinois applicable to contracts made and performed in such State and any applicable laws of the United States of America.

Miscellaneous

36. If there shall be more than one beneficial owner of Trustee executing this Mortgage, all references herein to "Beneficiary" shall be deemed to refer to each such beneficial owner. All references to "Mortgagor" herein shall be deemed to refer to each of Trustee and Beneficiary.

This Mortgage and all provisions hereof, shall extend to and be binding upon Mortgagor and its successors, grantees and assigns, any subsequent owner or owners of the Premises, and all persons claiming under or through Mortgagor, and the word "Mortgagor" when used herein shall include all such persons and all persons liable for the payment of the indebtedness or any part thereof, whether or not such persons shall have executed said Note or this Mortgage. The word "Mortgagee" when used herein shall include the successors and assigns of the Mortgagee named herein, and the holder or holders, from time to time, of the Note secured hereby.

In the event one or more of the provisions contained in this Mortgage or the Note secured hereby or in any other security documents given to secure the payment of the Note secured hereby shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall, at the option of the Mortgagee, not affect any other provision of this Mortgage, and this Mortgage shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein or therein.

No offset or claim that Mortgagor now has or may have in the future against Mortgagee shall relieve Mortgagor from paying any amounts due under the Note secured hereby or from performing any other obligations contained herein or secured hereby.

At all times, regardless of whether any loan proceeds have been disbursed, this Mortgage secures (in addition to any loan proceeds disbursed from time to time) the payment of any and all expenses and advances due to or incurred by Mortgagee in connection with the indebtedness secured hereby; provided, however,

07527052

UNOFFICIAL COPY

notwithstanding anything to the contrary herein, the total aggregate indebtedness secured by this Mortgage shall not exceed an amount equal to 500% of the face amount of the Note.

Mortgagor shall not by act or omission permit any building or other improvement on the Premises not subject to the lien of this Mortgage to rely on the Premises or any part thereof or any interest therein to fulfill any municipal or governmental requirement, and Mortgagor hereby assigns to Mortgagee any and all rights to give consent for all or any portion of the Premises or any interest therein to be used. Similarly, no building or other improvement on the Premises shall rely on any premises not subject to the lien of this Mortgage or any interest therein to fulfill any governmental or municipal requirement. Mortgagor shall not by act or omission impair the integrity of the Premises as a single zoning lot separate and apart from all other premises. Any act or omission by Mortgagor which would result in a violation of any of the provisions of this paragraph shall be void.

Mortgagor on written request of the Mortgagee will furnish a signed statement of the amount of the indebtedness secured hereby and whether or not any default then exists hereunder and specifying the nature of any such default.

Mortgagee shall have the right at its option to foreclose this Mortgage subject to the rights of any tenant or tenants of the Premises and the failure to make any such tenant or tenants a party defendant to any such civil action or to foreclose their rights will not be asserted by the Mortgagor as a defense in any civil action instituted to collect the indebtedness secured hereby, or any part thereof or any deficiency remaining unpaid after foreclosure and sale of the Premises, any statute or rule of law at any time existing to the contrary notwithstanding.

At the option of the Mortgagee, this Mortgage shall become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to insurance proceeds or any award in condemnation) to any and all leases of all or any part of the Premises upon the execution by Mortgagee and recording thereof, at any time hereafter, in the Office of the Recorder of Deeds in which this Mortgage was recorded, of a unilateral declaration to that effect.

Any property management agreement for the Premises, whether now in effect or entered into hereafter by Mortgagor with a property manager, shall contain a "no lien" provision whereby the property manager waives and releases, to the extent permitted by law, any and all mechanics' lien rights, if any, that it or anyone claiming through or under it may have pursuant to applicable law. Such property management agreement or a short form thereof shall, at Mortgagee's request, be recorded with the Office of the Recorder of Deeds for the county in which the Premises are located. In addition, Mortgagor shall cause the property manager to enter into a subordination agreement with Mortgagee, in recordable form, whereby the property manager subordinates, to the extent permitted by law, its present and future lien rights and those of any party claiming by, through or under it, to the lien of this Mortgage. Mortgagor's failure to require the "no lien" provision or the subordination agreement described herein shall constitute an Event of Default hereunder.

The proceeds of the Note secured by this Mortgage shall be used for the purposes specified in 815 ILCS 205/4 Illinois Compiled Statutes, as amended from time to time; and that the principal obligation secured hereby constitutes a business loan within the purview and operation of 815 ILCS 205/4(1)(c).

The Mortgagor hereby waives all right of homestead exemption in the Premises.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

This Mortgage may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute but one and the same instrument.

The terms "Mortgage", "Security Agreement" and "Mortgage and Security Agreement" wherever used herein or in the Note secured hereby or in any other instrument evidencing or securing the Note secured hereby shall mean this Mortgage and the Security Agreement herein contained or any other security agreement securing the Note, as the context may so require.

This Mortgage is executed by Trustee, not personally but solely as Trustee as aforesaid, in the exercise of the power and authority conferred upon and vested in it as such Trustee (and Trustee hereby warrants that it possesses full power and authority to execute this instrument), and it is expressly understood and agreed that nothing herein or in the Note contained shall be construed as creating any liability on Trustee personally to perform any covenant, either express or implied, herein contained, all such liability, if any, being expressly waived by Mortgagee and by every person now or hereafter claiming any right or security hereunder, and that so far as the Trustee personally is concerned, the legal holder or holders of the Note and the owner or owners of the indebtedness accruing hereunder shall look solely to the premises hereby conveyed for the payment thereof, by the enforcement of the lien hereby created, in the manner herein and in said Note provided, or by action to enforce the personal liability of any comaker of the Note or any guarantor thereof.

IN WITNESS WHEREOF, Mortgagee has executed this Mortgage the day and year first above written.

ATTEST:

By: Attestation not required by American National Bank and Trust Company of Chicago Bylaws

Its: _____

TRUSTEE:

American National Bank and Trust
Company of Chicago,
as Trustee as aforesaid

By: [Signature]

Its: [Signature]

BENEFICIARY:

3937 North Clarendon, LLC,
an Illinois limited liability company

BY: [Signature]

ITS: [Signature]

97527052

UNOFFICIAL COPY

BENEFICIARY'S ACKNOWLEDGEMENT

STATE OF ILLINOIS)

) SS.

COUNTY OF COOK)

I HEREBY CERTIFY that on this 15 day of JUNE, 1997 before me personally appeared Joseph V. Savage, to me known to be the same person who signed the foregoing instrument as his free act and deed, and as Manager of 3937 North Clarendon, LLC., an Illinois limited liability company, for the use and purpose therein mentioned.

WITNESS my signature and official seal at 2039 North in the County of Cook and State of Illinois, the day and year last aforesaid.



Robert P. Gahn

Notary Public

My Commission Expires: _____

971527052

Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT "A"

LEGAL DESCRIPTION

THE SOUTH 25 FEET OF THE NORTH 50 FEET OF LOT 5 IN BLOCK 2 IN EQUITABLE TRUST COMPANY'S SUBDIVISION OF PARTS OF SECTION 20 AND 21, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

CKA: 3937 NORTH CLARENDON
CHICAGO, IL.

PIN: 14-21-100-003

Property of Cook County Clerk's Office

97527052

UNOFFICIAL COPY

Loan Number 397

ASSIGNMENT OF RENTS AND LEASES

THIS ASSIGNMENT is made as of June 9, 1997, by American National Bank and Trust Company of Chicago, not personally but as Trustee under Trust Agreement dated January 11, 1982 and known as Trust No. 25-5197, having an office located at 33 N. LaSalle Street, Chicago, IL (the "Trustee"), and 3937 North Clarendon, L.L.C., an Illinois limited liability company (the "Beneficiary", and together with Trustee, the "Assignor"), for the benefit of LASALLE BANK FSB, having an office at LaSalle Bank FSB, 8303 West Higgins Road, 6th Floor, Chicago, Illinois 60631-2941 (the "Assignee").

WITNESSETH:

WHEREAS, Trustee is the record owner of the fee simple estate in and to the real estate described in Exhibit "A" attached hereto and by this reference incorporated herein (the "Property"); and

WHEREAS, Beneficiary is the owner of 100 percent of the beneficial interest in Trustee; and

WHEREAS, Assignor has concurrently herewith executed and delivered to Assignee a certain Installment Note of even date herewith in the principal amount of One Hundred Seventeen Thousand Three Hundred Fifty Three and no/100 DOLLARS (\$117,353.00) (such note and any and all notes issued in renewal thereof or in substitution or replacement therefor are hereinafter referred to as the "Note"), which Note is secured by a Mortgage, Security Agreement and Financing Statement of even date herewith executed by Assignor in favor of Assignee (the "Mortgage") encumbering the Property and by other collateral documents in favor of Assignee (the Note, Mortgage and all other documents executed in connection therewith are hereinafter referred to as the "Loan Documents").

**THIS DOCUMENT WAS PREPARED BY
AND AFTER RECORDING RETURN TO:**

Laura Kenny
LaSalle Bank FSB
8303 West Higgins Road, 6th Floor
Chicago, Illinois 60631-2941

**PERMANENT REAL ESTATE TAX
IDENTIFICATION NO.:**

14-21-100-003

PROPERTY ADDRESS:

3937 North Clarendon
Chicago, IL.

WITNESSETH:

108385/m1
2082

97527052

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

NOW, THEREFORE, for the purpose of securing payment of the indebtedness evidenced by the Note and the Loan Documents, and the payment of all advances and other sums with interest thereon becoming due and payable to Assignee under the provisions hereof or of the Note and the Loan Documents, and any sums secured by said instruments, and the performance and discharge of each and every obligation, covenant and agreement of Assignor herein or arising under the Note and Loan Documents, and also in consideration of TEN DOLLARS (\$10.00), the receipt whereof is hereby acknowledged, the parties hereby agree as follows:

1. Assignment Clause. Assignor does hereby sell, assign, transfer and set over unto Assignee all right, title and interest of Assignor in and to all leases, licenses, or other agreements granting possession, use, or occupancy of all or any portion of the Property, whether now existing or hereinafter entered into, and any and all extensions and renewals thereof, and all rents, issues (including income and receipts from the use and occupancy of any hotel rooms), revenues, proceeds and profits therefrom (collectively, the "Leases"). Assignor further does hereby sell, assign, transfer and set over unto Assignee all right, title and interest of Assignor in and to any security deposits or other deposits now or hereafter held by Assignor in connection with any of the Leases, and the benefit of any guarantees executed in connection with any of the Leases. This Assignment is absolute and is effective immediately.

2. Representations. Assignor represents and warrants that: (i) it has made no prior assignment or pledge of Assignor's interest in any of the Leases; (ii) no default exists in any of the Leases and there exists no state of fact which, with the giving of notice or lapse of time or both, would constitute a default under any of the Leases; (iii) Assignor shall fulfill and perform each and every covenant and condition of each of the Leases by the landlord thereunder to be fulfilled or performed and, at the sole cost and expense of Assignor, enforce (short of termination of any of the Leases) the performance and observance of each and every covenant and condition of all such Leases by the tenants thereunder to be performed and observed; (iv) as of the date hereof, none of the Leases have been modified or extended except as disclosed to Assignee in writing; (v) Assignor is the sole owner of the landlord's interest in the Leases; (vi) the Leases are valid and enforceable in accordance with their terms; and (vii) no prepayment of any installment of rent for more than one (1) month due under any of the Leases has been received by Assignor.

3. Negative Covenants of Assignor. Assignor shall not without Assignee's prior written consent, (i) execute an assignment or pledge of Assignor's interest in any of the Leases, except to Assignee; (ii) modify, extend or otherwise alter the terms of any of the existing Leases except in the ordinary course of Assignor's business and upon commercially reasonable terms; (iii) accept prepayments of any installments of rents to become due under any of the Leases for more than one (1) month; (iv) execute any new Lease except a Lease on a form of Lease approved in writing by Assignee, in the ordinary course of Assignor's business and upon commercially reasonable terms; (v) in any manner impair the value of the Property; or (vi) permit the Leases to become subordinate to any lien other than a lien created by the Loan Documents or a lien for general real estate taxes not delinquent.

4. Affirmative Covenants of Assignor. Assignor shall at its sole cost and expense (i) provide Assignee, within fifteen (15) days after the end of each calendar year and, if Assignee so requests, within fifteen (15) days of Assignee's request, with a rent roll for the Property containing the names of all occupants of the Property or any part thereof, the terms of their respective Leases, the space occupied and the rentals payable thereunder and such other information as Assignee shall reasonably require and, upon Assignee's request, a copy of each Lease affecting the Property whether now existing or hereafter arising; (ii) enter into any new Leases only upon a form of Lease previously approved by Assignee in writing; (iii) at all times promptly and faithfully abide by, discharge or perform all of the covenants, conditions and agreements contained in the Leases; (iv) enforce or secure the performance of all of the covenants, conditions and agreements of the Leases on the part of the occupants to be kept and performed; (v) appear in and defend any action or proceeding arising under, growing out of or in any manner connected with the Leases or the obligations, duties or liabilities of Assignor, as Lessor, and of the occupants thereunder, and pay all costs and expenses of Assignee, including reasonable attorneys' fees in any such action or proceeding in which Assignee may appear; (vi) make, execute and deliver to Assignee upon demand any and all instruments required to further evidence the assignment to Assignee hereunder of any and all Leases subsequently entered into; (vii) exercise within five (5) days of the demand therefor by Assignee any right to request from the lessee under any of the Leases a certificate with respect to the status thereof; (viii) furnish Assignee promptly with copies of any notices of default

UNOFFICIAL COPY

which Assignor may at any time forward to any lessee of the Property or any part thereof or receive from any lessee of the Property or any part thereof; and (ix) pay immediately upon demand all sums expended by Assignee under the authority hereof, together with interest thereon at the Default Rate provided in the Note.

5. Agreement of Assignor. (a) Should Assignor fail to make any payment or to do any act as herein provided for, then Assignee, but without obligation so to do, and without releasing Assignor from any obligation hereof, may make or do the same in such manner and to such extent as Assignee may deem necessary to protect the security hereof, including specifically, without limiting its general powers, the right to appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Assignee, and also the right to perform and discharge each and every obligation, covenant and agreement of the Assignor contained in the Leases, and in exercising any such powers to incur and pay necessary costs and expenses, including reasonable attorneys' fees, all at the expense of Assignor.

(b) This Assignment shall not operate to place responsibility for the control, management, care and/or repair of the Property upon Assignee and Assignee shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under the Leases, or under or by reason of this Assignment, and Assignor shall and does hereby agree to indemnify and to hold Assignee harmless of and from any and all liability, loss or damage which it may or might incur under the Leases or under or by reason of this Assignment and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertaking on its part to perform or discharge any of the terms, covenants or agreements contained in the Leases, except any such claims or demands resulting from the acts or actions of Assignee. Should Assignee incur any such liability, loss or damage under the Leases or under or by reason of this Assignment, or in the defense of any such claims or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees, shall be secured hereby, and Assignor shall reimburse Assignee therefor, with interest thereon from the date incurred at the Default Rate provided in the Note, immediately upon demand.

(c) Nothing herein contained shall be construed as constituting Assignee a "mortgagee in possession" in the absence of the taking of actual possession of the Property by Assignee, pursuant to the provisions hereinafter contained. In the exercise of the powers herein granted Assignee, no liability shall be asserted or enforced against Assignee, all such liability being expressly waived and released by Assignor.

(d) A demand on any lessee by Assignee for the payment of the rent upon any Event of Default claimed by Assignee hereunder shall be sufficient warrant to the lessee to make and pay to Assignee payment of rents to Assignee without the necessity for further consent by Assignor.

(e) Assignor does further specifically authorize and instruct each and every present and future lessee of the whole or any part of the Property to pay all unpaid rental agreed upon in any tenancy to Assignee upon receipt of demand from Assignee to pay the same, and Assignor hereby waives the right, claim, or demand it may now or hereafter have against any such lessee by reason of such payment of rental to Assignee or compliance with other requirements of Assignee pursuant to this Assignment. Assignor hereby acknowledges that the foregoing waiver is made for the benefit of any such lessee.

(f) Assignor hereby irrevocably appoints Assignee as its true and lawful attorney with full power of substitution and with full power for Assignee in its own name and capacity or in the name and capacity of Assignor, from and after any Event of Default hereunder, to demand, collect, receive and give complete acquittances for any and all rents, income and profits accruing from the Property, and at Assignee's discretion to file any claim or take any other action or proceeding and make any settlement of any claims, in its own name or otherwise, which Assignee may deem necessary or desirable in order to collect and enforce the payment of the rents, income and profits. Occupants of the Property are hereby expressly authorized and directed to pay any and all amounts due Assignor pursuant to the Leases directly to Assignee or such nominee as Assignee may designate in writing delivered to and received by such occupants, and are expressly relieved of any and all duty, liability or obligation to Assignor in respect of all payments so made.

2017/2/26

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

(g) In the event any lessee under the Leases should be the subject of any proceeding under the Federal Bankruptcy Code, as amended from time to time, or any other federal, state, or local statute which provides for the possible termination or rejection of the Leases assigned hereby, the Assignor covenants and agrees that if any of the Leases is so terminated or rejected, no settlement for damages shall be made without the prior written consent of Assignee, and any check in payment of damages for termination or rejection of any such Lease shall be made payable both to Assignor and Assignee. The Assignor hereby assigns any such payment to Assignee and further covenants and agrees that upon the request of Assignee, it shall duly endorse to the order of Assignee any such check, the proceeds of which shall be applied to whatever portion of the indebtedness secured by this Assignment Assignee may elect.

6. Events of Default. The occurrence of any one or more of the following events or conditions shall be an Event of Default hereunder:

- (a) non-payment of any of the indebtedness evidenced by the Note or secured by the Mortgage when due, whether by acceleration or otherwise;
- (b) the occurrence of an Event of Default under the terms of the Note; or
- (c) the occurrence of an Event of Default under the terms of the Mortgage; or
- (d) a default in the performance of any obligation, covenant, or agreement contained herein and the expiration of any applicable grace period or the breach of any warranty or representation contained herein; or
- (e) the occurrence of an Event of Default under the terms of any other Loan Document.

Upon, or at any time after, the occurrence of an Event of Default, Assignee may, at its option, without regard to the adequacy of the security for the indebtedness hereby secured, either in person or by agent, with or without bringing any action or proceeding, or by receiver to be appointed by a court, enter upon, take possession of, manage and operate the Property or any part thereof; and do any acts which Assignee deems proper to protect the security hereof; and, either with or without taking possession of said Property, in the name of Assignor or in its own name sue for or otherwise collect and receive such rents, issues, profits, and advances, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including, but not being limited to, reasonable attorneys' fees, management fees and broker's commissions, upon any indebtedness secured hereby, and in such order as Assignee may determine. Assignee reserves, within its own discretion, the right to determine the method of collection and the extent to which enforcement of collection of delinquent rents shall be prosecuted, and shall not be accountable for more monies than it actually receives from the Property. The entering upon and taking possession of said Property or the collection of such rents, issues, profits and advances and the application thereof, as aforesaid, shall not cure or waive any default under the Loan Documents or the Note. Assignor agrees that it shall facilitate in all reasonable ways Assignee's collection of said rents, and shall, upon request by Assignee, promptly execute a written notice to each lessee directing the lessee to pay rent to Assignee.

7. Assignee's Right to Exercise Remedies. No remedy conferred upon or reserved to Assignee herein or in the Loan Documents or the Note or in any other agreement is intended to be exclusive of any other remedy or remedies, and each and every such remedy, and all representations, herein, in the Note or in the Loan Documents shall be cumulative and concurrent, and shall be in addition to every other remedy given hereunder and thereunder or now or hereafter existing at law or in equity or by statute. The remedies may be pursued singly, successively or together against the Assignor and/or the Property at the sole discretion of Assignee. No delay or omission of Assignee to exercise any right or power accruing upon any default shall impair any such right or power, or shall be construed to be a waiver of any such default or any acquiescence therein, and every power or remedy given by this Assignment to Assignee may be exercised from time to time as often as may be deemed expedient by Assignee.

97127052

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

8. Defeasance. As long as Assignor shall not have committed an Event of Default hereunder, Assignor shall have the right to collect upon, but not prior to accrual, all rents, issues, profits and advances from the Property and to retain, use and enjoy the same. Upon the payment in full of all indebtedness secured hereby and the compliance with all obligations, covenants and agreements herein and in the Note and the Loan Documents, this Assignment shall become and be void and of no effect, but the affidavit of any officer of Assignee showing any part of said indebtedness remaining unpaid or showing non-compliance with any such terms of conditions shall be and constitute conclusive evidence of the validity, effectiveness and continuing force of this Assignment, and any person may and is hereby authorized to rely thereon.

9. Miscellaneous. (a) This Assignment may be modified, amended, discharged or waived only by an agreement in writing and signed by the party against whom enforcement of any such modification, amendment, discharge or waiver is sought.

(b) The covenants of this Assignment shall bind the Assignor, the successors and assigns of Assignor, and all present and subsequent occupants and sub-occupants of the Property or any part thereof, and shall inure to the benefit of Assignee, its successors and assigns.

(c) As used herein the singular shall include the plural as the context requires, and all obligations of each Assignor shall be joint and several.

(d) The article headings in this instrument are used for convenience in finding the subject matters, and are not to be taken as part of this instrument, or to be used in determining the intent of the parties or otherwise in interpreting this instrument.

(e) In the event any one or more of the provisions contained in this Assignment shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall, at the option of Assignee, not affect any other provision of this Assignment, but this Assignment shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein or therein.

(f) This Assignment shall be governed by and construed in accordance with the laws of the State in which the Property is located.

(g) All notices or other communications required or permitted hereunder shall be (a) in writing and shall be deemed to be given when either (i) delivered in person, (ii) three business days after deposit in a regularly maintained receptacle of the United States mail as registered or certified mail, postage prepaid, (iii) when received if sent by private courier service or by facsimile transmission, or (iv) on the day on which the party to whom such notice is addressed refuses delivery by mail or by private courier service and (b) addressed as follows:

If to Assignor:

3937 North Clarendon LLC
c/o Mr. Joseph Farago
2034 N. Clark Street
Chicago, IL 60614

If to Assignee:

LaSalle Bank FSB
8303 West Higgins Road
Sixth Floor
Chicago, IL 60631

or at such other place as any party hereto may by notice in writing designate as a place for service of notice, shall constitute service of notice hereunder.

(h) The term "Assignor" and "Assignee" shall be construed to include the heirs, personal representatives, successors and assigns thereof. The gender and number used in this Assignment are used as a reference term only and shall apply the same effect whether the parties are of the masculine or feminine gender, corporate or other form, and the singular shall likewise include the plural.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

(i) This Assignment may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute but one and the same instrument.

10. Exculpation of Trustee. This Assignment of Rents and Leases is executed by Trustee, not personally but solely as Trustee as aforesaid, in the exercise of the power and authority conferred upon and vested in it as such Trustee (and Trustee hereby warrants that it possesses full power and authority to execute this instrument), and it is expressly understood and agreed that nothing herein or in the Note contained shall be construed as creating any liability on Trustee personally to perform any covenant, either express or implied, herein contained, all such liability, if any, being expressly waived by Assignee and by every person now or hereafter claiming any right or security hereunder, and that so far as the Trustee personally is concerned, the legal holder or holders of the Note and the owner or owners of the indebtedness accruing hereunder shall look solely to the collateral hereby conveyed for the payment thereof, by the enforcement of the lien created by the Mortgage or any other Loan Document, or by action to enforce the personal liability of any comaker of the Note or any guarantor thereof.

IN WITNESS WHEREOF, the undersigned have caused these presents to be signed by the day and year first above written.

TRUSTEE:

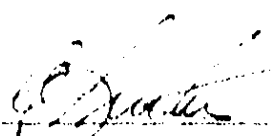
American National Bank and Trust
Company of Chicago,
as Trustee and not personally

ATTEST:

Attestation not authorized by American National
Bank and Trust Company of Chicago, by law.

By: _____

Its: _____

By:  _____

Its: _____

BENEFICIARY:

3937 North Clarendon, LLC, an Illinois limited liability
company

BY:  _____

ITS: _____

ARents 11
03/21/96

2007/2/26

UNOFFICIAL COPY

TRUSTEE'S ACKNOWLEDGEMENT

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, CYNTHIA K. HARRIS, a Notary Public in and for said County in the State
aforesaid, DO HEREBY CERTIFY THAT ANITA LUTKUS and
 personally known to me and known by me to be the
Trust Officer and respectively
of American National Bank and Trust Company of Chicago, as trustee as aforesaid, in whose name the above and
foregoing instrument is executed, appeared before me this day in person and acknowledged that they signed and
delivered the said instrument as their free and voluntary act and as the free and voluntary act of said corporation, as
trustee as aforesaid, for the uses and purposes therein set forth, and the said Secretary then
and there acknowledged that he/she, as custodian of the corporate seal of said corporation did affix the said corporate
seal to said instrument as his/her free and voluntary act and as the free and voluntary act of said corporation, for the
uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this JUN 20 1997 day of



Cynthia K. Harris

Notary Public

My Commission Expires:

97527052

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

BENEFICIARY'S ACKNOWLEDGEMENT

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I HEREBY CERTIFY that on this 15 day of JUNE, 1997, before me personally appeared Susanne Y. Pappas, to me known to be the same person who signed the foregoing instrument as his free act and deed, and as off of 3937 North Clarendon, L.L.C., an Illinois limited liability company, for the use and purpose therein mentioned.

WITNESS my signature and official seal at 2014/06/15 in the County of Cook and State of Illinois, the day and year last aforesaid.



Robert P. Hahn
Notary Public

My Commission Expires: _____

Property of Cook County Clerk's Office

975270512

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT "A"

LEGAL DESCRIPTION

THE SOUTH 25 FEET OF THE NORTH 50 FEET OF LOT 5 IN BLOCK 2 IN EQUITABLE TRUST COMPANY'S SUBDIVISION OF PARTS OF SECTION 20 AND 21, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

CKA: 3937 NORTH CLARENDON
CHICAGO, IL

PIN: 14-21-100-03

Property of Cook County Clerk's Office

97527052