

UNOFFICIAL COPY

CO OFFICE: MUTUAL BROADWAY 663 007 2MT 63097
PREPARED BY AND AFTER
RECORDING RETURN TO:
William B. Phillips, Esq.
Levin, McParland, Phillips, & Leydig
180 North Wacker Drive
Chicago, Illinois 60606

97540107

1-2
7661275
D2 *Savit*

DEPT-01 RECORDING 185.00
DEPT-01 RECORDING
T#0012 TRAN 6068 07/25/97 13:33:00
#4584 CG *-97-540107
COOK COUNTY RECORDER

MORTGAGE

THIS MORTGAGE made this 23rd day of July, 1997, between AMALGAMATED BANK OF CHICAGO, not personally, but solely as Trustee under Trust Agreement dated August 25, 1988 and known as Trust No. 5389, hereinafter referred to as "Mortgagor", and MUTUAL TRUST LIFE INSURANCE COMPANY, an Illinois corporation, having its Home Office in Oak Brook, Illinois, hereinafter referred to as "Mortgagee".

WITNESSETH

That Mortgagor is justly indebted to Mortgagee for money borrowed in the amount of FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$500,000.00) as evidenced by a Promissory Note (which promissory note together with any and all other notes executed and delivered in substitution, renewal, or extension thereof, in whole or in part, are collectively referred to as "Note") executed by Mortgagor of even date herewith, made payable to the order of and delivered to Mortgagee, by the provisions of which Mortgagor promises to pay to Mortgagee the principal amount of Note and interest thereon as provided in Note together with all other sums (up to but not exceeding two hundred percent (200%) of the principal amount of Note) advanced by Mortgagee to protect the "Mortgaged Premises" (hereafter defined) to preserve the priority of the lien established hereby ("Other Sums"), at the place or places set forth in Note. The principal amount of Note, interest due thereon, any applicable prepayment premium provided for in Note, and Other Sums are collectively referred to as "Indebtedness" and the Note has a final installment of principal and interest due and payable on the first day of August 1, 2007.

NOW, THEREFORE, Mortgagor, to secure the payment of Indebtedness and the performance of the terms, covenants, conditions and agreements contained herein and in Note, and any other document executed and delivered to secure Indebtedness (collectively "Other Loan Documents"), DOES, by these presents, MORTGAGE, GRANT, SELL AND CONVEY unto Mortgagee, its successors and assigns, forever, the following described land situated in the City of Chicago, County of Cook and State of Illinois ("Land"):

BOX 333-CTI

97540107

Handwritten initials/signature

Property of Cook County, Illinois

UNOFFICIAL COPY

NO. 123
PROPERTY OF
COUNTY CLERK'S OFFICE

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Lots 4 and 5 in Hitchcock and Wilson's Subdivision of the East 1/2 of Block 1 in Bickerdike and Steele's Subdivision of the West 1/2 of the North West 1/4 of Section 28, Township 40 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois.

Address of Property: 3168 North Broadway, Chicago, Illinois
Permanent Index No.: 14-28-101-029

TOGETHER WITH (collectively "Other Interests"):

A. All right, title and interest of the Mortgagor including any after-acquired title or reversion, in and to the beds of ways, roads, streets, avenues and alleys adjoining Land.

B. All and singular the tenements, hereditaments, easements, appurtenances, passages, waters, water rights, water courses, riparian rights, other rights, liberties and privileges thereof or in any way now or hereafter appertaining, including any other claim at law or in equity as well as any after-acquired title, franchise or license and the reversion and reversions and remainder and remainders thereof.

C. All buildings and improvements of every kind and description now or hereafter located or placed upon Land ("Improvements") and all materials intended for construction, reconstruction, alteration and repairs of Improvements all of which materials shall be deemed a part thereof immediately upon the delivery of same, and all fixtures and articles of personal property now or hereafter owned by the Mortgagor and attached to or contained in and used in connection with Land and Improvements, including but not limited to all cranes and craneways, furniture, furnishings, apparatus, machinery, motors, elevators, fittings, radiators, gas ranges, ice boxes, mechanical refrigerators, awnings, shades, screens, blinds, office equipment, carpeting and other furnishings, and all plumbing, heating, lighting, cooking, laundry, ventilating, refrigerating, incinerating, air-conditioning and sprinkler equipment and fixtures and appurtenances thereto, and all renewals or replacements thereof or articles in substitution therefore, whether or not the same are or shall be attached to Improvements in any manner, excepting therefrom, however, any furniture, fixtures, equipment and articles of personal property, regardless of the manner or mode of attachment, belonging to any present or future tenant or lessee of Land and Improvements (any reference hereafter made to furniture, fixtures, equipment or personal property shall be deemed to exclude the same); IT BEING MUTUALLY AGREED that all the aforesaid property owned by Mortgagor and placed by it on Land and Improvements shall, so far as permitted by law, be deemed to be fixtures and a part of the realty and security for the payment of Indebtedness and, as to any such property not deemed to be fixtures and a part of "Mortgaged Premises" (hereafter defined), this Mortgage shall be and is a security agreement for the purpose of establishing a security interest in said property, pursuant to the Uniform Commercial Code of the State of Illinois, and additional security for the payment of Indebtedness and the performance of all other obligations of Mortgagor herein.

975A0107

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

D. All rents, issues, proceeds and profits accruing and to accrue from Mortgaged Premises and all right, title and interest of Mortgagor in and to any and all leases approved by Mortgagee now or hereafter on or affecting Mortgaged Premises, whether written or oral, and all other leases and agreements for the use thereof ("Leases"), together with all security therefore and all monies payable thereunder, subject, however, to the conditional permission of Mortgagee given to Mortgagor to collect, receive, take, use and enjoy the rentals, issues, proceeds and profits to be paid pursuant thereto.

E. All:

(1) proceeds heretofore or hereafter paid to Mortgagor and all subsequent owners of Mortgaged Premises ("Proceeds") by reason of loss or damage by fire and such other hazards, casualties and contingencies ("Casualty") insured pursuant to "Insurance Policies" (hereafter defined); and

(2) all awards and other compensation heretofore or hereafter to be made to Mortgagor and all subsequent owners of Mortgaged Premises ("Awards") for any taking by condemnation or eminent domain proceedings, either permanent or temporary ("Condemnation"), of all or any part of Mortgaged Premises or any easement or appurtenance thereof, including consequential damage and change in grade of streets;

which Proceeds or Awards are hereby assigned to Mortgagee. Mortgagor hereby appoints Mortgagee its attorney-in-fact, coupled with an interest and authorizes, directs and empowers such attorney-in-fact, at its option, on behalf of Mortgagor its personal representatives, successors and assigns, to adjust or compromise the claim for Proceeds or Awards and to collect and receive the proceeds thereof, to give proper receipts and acquittances therefore and, after deducting expenses of collection, to apply the net proceeds received therefrom as a credit upon any part, as may be selected by Mortgagee, of Indebtedness, notwithstanding that the amount owing thereon may not then be due and payable or that the same is otherwise adequately secured.

For convenience, Land, Improvements and Other Interests are herein collectively referred to as "Mortgaged Premises".

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

MORTGAGOR COVENANTS that it is lawfully seized of the Mortgaged Premises, that the same is unencumbered, and that it has good right, full power and lawful authority to convey and mortgage the same, and that it will warrant and forever defend the Mortgaged Premises and

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

the quiet and peaceful possession of the same against the lawful claims of all persons whomsoever.

PROVIDED, HOWEVER, that if and when Mortgagor shall pay in full when due Indebtedness and shall duly and timely perform all of the terms, covenants, conditions and agreements contained herein and in the Note and Other Loan Documents provided to be performed and observed by the Mortgagor, then this Mortgage, Note, and Other Loan Documents, shall be released, at the sole cost and expense of Mortgagor, otherwise the same shall be and remain in full force and effect.

MORTGAGOR HEREBY FURTHER COVENANTS AND AGREES AS FOLLOWS:

1. PRIORITY OF LIEN AND SUBORDINATE ENCUMBRANCES: This Mortgage is and shall remain a valid first mortgage lien on the Mortgaged Premises until the payment in full of Indebtedness. Without the specific prior written consent of Mortgagee, Mortgagor shall not create or suffer or permit any mortgage, lien, charge or encumbrance to attach to or be filed against the Mortgaged Premises, whether such lien or encumbrance is inferior or superior to the lien of this Mortgage, including mechanic's liens, materialmen's liens, or other claims for lien made by parties claiming to have provided labor or materials with respect to the Mortgaged Premises.

2. SUBROGATION: To the extent Mortgagee, following the date hereof, pays any sum due pursuant to any provision of law, instrument or document establishing any lien prior or superior to the lien of this Mortgage, Mortgagee shall have and be entitled to a lien on Mortgaged Premises equal in parity to that discharged and Mortgagee shall be subrogated to, receive and enjoy all rights and liens possessed, held or enjoyed by the holder of such lien, which shall remain in existence and benefit Mortgagee to secure the payment of Indebtedness. Mortgagee shall be subrogated, notwithstanding its release of record, to mortgages, trust deeds, superior titles, vendors' liens, and other liens, charges, encumbrances, rights and equities on Mortgage Premises to the extent that any obligation thereunder is paid or discharged from the principal sum secured hereby.

3. PROMPT PAYMENT OF INDEBTEDNESS AND PERFORMANCE OF COVENANTS: Mortgagor shall promptly pay Indebtedness at the times and in the manner provided in Note and this Mortgage and duly and punctually perform and observe all of the terms, provisions, conditions, covenants and agreements on Mortgagor's part to be performed or observed as provided herein, in the Note and in Other Loan Documents. Mortgagor shall have the privilege of making prepayments on the principal of the Note (in addition to the required payments thereunder) only at the times, and upon payment of the prepayment premium, in accordance with the terms and conditions set forth in the Note, but not otherwise.

4. TAX AND INSURANCE DEPOSITS AND APPLICATION: In addition to the payment of Indebtedness, Mortgagor shall pay to Mortgagee, concurrently with the payments

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

required pursuant to Note, an amount equal to the real estate taxes and special assessments, if any, next due on Mortgaged Premises, plus the premiums that will next become due and payable on Insurance Policies, as estimated by Mortgagee, less all sums already paid therefore, divided by the number of months to elapse before one month prior to the date when such taxes, assessments and premiums will become delinquent. Funds held by Mortgagee, or its duly authorized agent under the provisions of this paragraph, will be held in trust to pay real estate taxes, assessments and insurance premiums when the same become due and payable, however Mortgagee shall not be required to keep such funds separate and apart from any other funds held by Mortgagee, or its duly authorized agent, and no interest will accrue or be allowed to Mortgagee on such funds.

In the event the amount deposited with Mortgagee as required in the paragraph immediately preceding this paragraph shall not be sufficient to pay said real estate taxes, assessments or insurance premiums in full when due, Mortgagor shall deposit with Mortgagee or its duly authorized agent, an amount sufficient to pay the same. Default in making any of the said payments required for the purpose of providing funds for the payment of taxes, assessments and insurance premiums as aforesaid shall at the option of the Mortgagee mature the entire Indebtedness secured hereby.

In the event the amount deposited with Mortgagee as hereinabove required exceeds the amount required to pay such real estate taxes, assessments and insurance premiums, the surplus shall, at the option of Mortgagee, either be returned to Mortgagor, provided no Default shall exist, or be applied against future real estate taxes, special assessments and insurance premiums, and the amount of estimated monthly payments due from Mortgagor shall be adjusted to reflect such application.

At such time as Indebtedness is to be paid in full, whether by reason of maturity or Mortgagor's election to prepay Indebtedness as provided in Note, the Mortgagee shall apply, as a credit against Indebtedness, all funds held by it pursuant to this Paragraph 4.

If as a result of a Default, Mortgaged Premises are sold, foreclosed upon or Mortgagee acquires Mortgaged Premises otherwise after such Default, it shall apply, at the time of commencement of such proceedings, or at the time Mortgaged Premises are otherwise acquired, the balance then remaining of the funds accumulated under the provisions of this paragraph, as a credit against the amount of said principal sum then remaining unpaid under Note.

5. PAYMENT OF TAXES AND OTHER IMPOSITIONS. Mortgagor shall promptly pay, when due and payable, all ground rents, if any, and all taxes and assessments (general and special), water and sewer charges, public impositions, levies, dues and other charges, of whatever nature (collectively "Impositions"), which are now or shall hereafter be levied or assessed or which may otherwise be or become a lien upon or against Mortgaged Premises, or any part thereof, other than matters expressly permitted herein. Mortgagor shall cause Mortgaged Premises to be separately taxed for real estate tax purposes.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

6. INSURANCE POLICIES, SETTLEMENT OF CLAIMS, AND APPLICATION OF PROCEEDS:

Insurance Policies: Until Indebtedness is fully paid, Mortgagor shall keep Mortgaged Premises continuously insured against Casualty in such amounts and with such limits, as Mortgagee may from time to time require, and in any event maintain the following described policies of insurance (the "Insurance Policies"):

a). All-risk casualty insurance, provided by an insurance carrier or carriers rated A Class VIII or better by A.M. Best's, for an amount equal to the full replacement cost of the Improvements, written on a replacement cost basis or with a replacement cost endorsement, including an Agreed Amount Endorsement (at the time of the execution and delivery hereof) a Contingent Liability From Operation of Building Laws Endorsement, a Demolition Cost Endorsement, an Increased Cost of Construction Endorsement and such other endorsements as Mortgagee may require, provided that, if at any time Mortgagee disagrees with Mortgagor's estimate of replacement cost, Mortgagor shall provide at Mortgagor's expense, an insurance appraisal, prepared by an insurance appraiser approved in advance of the appraisal work by Mortgagee, establishing the full replacement cost in a manner satisfactory to such insurance carrier;

b). Comprehensive public liability and property damage insurance in an amount not less than Two Million Dollars (\$2,000,000 00) combined single limit on an each and every occurrence basis showing Mortgagee as an additional insured;

c). Rental insurance in an amount at least equal to the total of (i) rent payable by tenants of the Mortgaged Premises for six (6) months; (ii) the amount of annual Impositions on the Mortgaged Premises; and (iii) the aggregate of premiums due or to become due on Insurance Policies for the then current year, all of which rental insurance shall be payable over a period not in excess of six (6) months following the event causing such insurance to be payable;

d). Flood insurance, sprinkler insurance, and boiler and machinery insurance, whenever Mortgagee notifies Mortgagor in writing that in Mortgagee's opinion such insurance is necessary and available, and specifying the amounts and any other reasonable specifications for such coverage; and

e). Such other insurance as may be deemed necessary by Mortgagee from time to time.

All Insurance Policies shall be in form, companies and amounts satisfactory to Mortgagee. All Insurance Policies insuring against Casualty, rent loss and other appropriate policies shall at

UNOFFICIAL COPY

all times, prior to and during foreclosure and at any time prior to confirmation of a foreclosure sale, include standard non-contributory mortgagee clauses in favor of and with loss payable to Mortgagee, as well as standard waiver of subrogation endorsements; shall name Mortgagee as an additional insured and loss payee; shall provide that the coverage shall not be terminated or materially modified without thirty (30) days prior advance written notice to Mortgagee; and shall provide that no claims shall be paid thereunder without ten (10) days' advance written notice to Mortgagee. Mortgagor will deliver all Insurance Policies, premiums prepaid, to Mortgagee; and, in case of Insurance Policies about to expire, Mortgagor shall deliver renewal or replacement policies not less than thirty (30) days prior to the expiration date thereof. All Insurance Policies shall continue to be held by Mortgagee until the Indebtedness shall have been paid in full.

Mortgagor shall not purchase separate insurance, concurrent in form or contributing in the event of loss with Insurance Policies unless Mortgagee is included thereon pursuant to a standard mortgagee clause acceptable to Mortgagee, and in the event Mortgagor does purchase such separate insurance, Mortgagor shall immediately notify Mortgagee thereof and promptly deliver to Mortgagee such policy or policies.

In case of sale pursuant to foreclosure of this Mortgage or other transfer of title to the Mortgaged Premises and extinguishment of the Indebtedness, complete title to all Insurance Policies and any other insurance policies held by Mortgagee with respect to the Mortgaged Premises, and to all prepaid or unearned premiums thereon shall pass to and vest in the purchaser or grantee. Mortgagee shall not by reason of accepting, rejecting, approving or obtaining insurance incur any liability for payment of losses.

Settlement of Claims: Mortgagor will give Mortgagee prompt notice of any Casualty causing loss or damage to the Mortgaged Premises. In case of loss or damage covered by any of the Insurance Policies, Mortgagee (or, after entry of decree of foreclosure, the purchaser at the foreclosure sale or decree creditor, as the case may be) may at its option either (a) settle and adjust any claim under such Insurance Policy without the consent of Mortgagor, or (b) allow Mortgagor to settle and adjust such claim with the consent of Mortgagee, provided that in either case, Mortgagee shall, and is hereby authorized to collect and receipt for any Proceeds, and the expenses incurred by Mortgagee in the adjustment and collection of Proceeds shall be so much additional Indebtedness secured hereby, and shall be reimbursed to Mortgagee upon demand or may be deducted by Mortgagee from Proceeds prior to any other application thereof. Each insurance company which has issued an Insurance Policy is hereby authorized and directed to make payment for all losses covered by such Insurance Policy to Mortgagee alone, and not to Mortgagee and Mortgagor jointly.

Application of Proceeds: Mortgagee may, in its sole discretion, elect to apply Proceeds either (a) to reduce the Indebtedness, or (b) to reimburse Mortgagor for the cost of restoring or repairing the Mortgaged Premises.

UNOFFICIAL COPY

In the event Mortgagee applies Proceeds to the Indebtedness and Proceeds do not discharge Indebtedness in full, the balance of Indebtedness shall become immediately due and payable with interest thereon at the Default Rate (as defined in Note). In the event Mortgagee applies Proceeds to the unpaid principal of Indebtedness, such application and any additional funds required to pay Indebtedness in full shall be free of any prepayment premium.

In the event Mortgagee elects to permit the use of Proceeds for rebuilding or restoring Mortgaged Premises, Mortgaged Premises shall be so rebuilt or restored so as to be as similar, as is reasonably possible, to the condition which existed prior to such Casualty. Proceeds shall be made available to Mortgagor, from time to time, upon the delivery to Mortgagee of satisfactory evidence of the estimated cost of completing such rebuilding or restoration, together with such architect's certificates, contractor's sworn statements, waivers of lien and other evidence of cost and payments as Mortgagee may reasonably require and approve. No payment made prior to final completion of such repair or restoration shall exceed ninety per cent (90%) of the value thereof, and at all times, the undisbursed balance of Proceeds shall be at least sufficient to pay for the cost of completion thereof, free and clear of liens. In the event Proceeds are insufficient to cover the cost of such rebuilding or restoring, Mortgagor shall pay such excess costs prior to any disbursement of Proceeds to it. Any surplus Proceeds, after the payment of all costs of rebuilding or restoring shall, at the option of Mortgagee, be applied on account of Indebtedness or paid to Mortgagor.

7. CONDEMNATION: In the event Mortgaged Premises, or any part thereof, is taken by Condemnation, Mortgagor is hereby authorized to settle and adjust any Awards with the consent of Mortgagee. Mortgagee is hereby empowered to collect and receive Awards, which shall be forthwith applied by Mortgagee, as it may elect, to the payment of Indebtedness or the rebuilding and restoration of Mortgaged Premises.

In the event Mortgagee applies Awards to the Indebtedness and Awards do not discharge Indebtedness in full, the balance of Indebtedness shall become immediately due and payable with interest thereon at the Default Rate. In the event Mortgagee applies Awards to the unpaid principal of Indebtedness, such application and any additional funds required to pay Indebtedness in full shall be free of any prepayment premium.

In the event Mortgagee elects to permit the use of Awards for rebuilding or restoring Mortgaged Premises, Mortgaged Premises shall be so rebuilt or restored so as to be as similar, as is reasonably possible, to the condition which existed prior to such Condemnation. In the event Mortgagor is entitled to reimbursement out of Awards, the proceeds of same shall be paid in the same manner as provided in paragraph 6 hereof with respect to a loss by Casualty. In the event Awards are insufficient to cover the cost of such rebuilding or restoring, Mortgagor shall pay such excess costs prior to any disbursement of Awards to it. Any surplus Awards, after the payment of all costs of rebuilding or restoring shall, at the option of Mortgagee, be applied on account of Indebtedness or paid to Mortgagor.

UNOFFICIAL COPY

8. CASUALTY OR CONDEMNATION AFTER FORECLOSURE: In the event of Casualty or Condemnation after foreclosure proceedings have been instituted, Proceeds or Awards, if not applied as specified in Paragraphs 6 and 7 above, shall be used to pay the amounts due in accordance with any decree of foreclosure which may be entered in any such proceedings and the balance, if any, shall either be paid to the owner of the equity redemption, if such owner shall be entitled to the same, or as the court may direct.

9. MORTGAGEE'S LIABILITY FOR COLLECTION OF PROCEEDS OR AWARDS: Mortgagee shall not be held liable for any failure to collect Proceeds or Awards, regardless of the cause of such failure.

10. USE, CARE OR WASTE: Mortgagor shall:

a). not abandon Mortgaged Premises or do or suffer anything to be done which would depreciate or materially impair the value thereof or the security of this Mortgage;

b). not remove or demolish any part of Improvements of a structural nature which would adversely affect the value of Mortgaged Premises;

c). not make nor permit or suffer any tenant to make any changes, additions or alterations to Mortgaged Premises of a structural nature which would adversely affect the value thereof, except as required by any applicable statute, law or ordinance of any governmental authority having jurisdiction over Mortgaged Premises and the intended use thereof, or as otherwise permitted by the terms of the existing leases with Tandy Corporation and United Farmstands Corporation, or as otherwise approved in writing by Mortgagee;

d). maintain, preserve and keep Mortgaged Premises in good, safe and insurable condition and repair and promptly make any needful and proper repairs, replacements, renewals, additions or substitutions required by wear and tear, damage, obsolescence or destruction;

e). promptly restore and replace any Improvements or Other Interests which are destroyed or damaged; and

f). not commit or permit to exist any waste of Mortgaged Premises.

Mortgagor shall comply with and cause Mortgaged Premises, and the use and condition thereof, to comply with all statutes, ordinances, requirements, regulations, orders and decrees relating to Mortgagor or Mortgaged Premises, or the use thereof, by any federal, state, county or other governmental authority and with all conditions and requirements necessary to preserve and extend any and all rights, licenses, permits, privileges, franchises and concessions (including, without

UNOFFICIAL COPY

limitation, those relating to land use and development, construction, access, water rights, noise and pollution) which are applicable to Mortgagor or have been granted for Mortgaged Premises, or the use thereof.

11. HAZARDOUS OR TOXIC SUBSTANCES: Mortgagor represents that it is currently in compliance with, and shall continue to comply and cause tenants of the Mortgaged Premises, or any part thereof, to comply with any and all Environmental Laws, (hereinafter defined) and any other laws, regulations, or orders with respect to the discharge and removal of Hazardous Substances (hereinafter defined), and shall pay immediately when due, the costs of any removal of any Hazardous Substances and shall keep the Mortgaged Premises free of any lien imposed pursuant to Environmental Laws or any other laws, regulations or orders. In the event Mortgagor fails to do so, after notice to Mortgagor and the expiration of the earlier of (i) applicable cure periods hereunder, or (ii) the cure period permitted under applicable Environmental Laws or any other laws, regulations or orders with respect to Hazardous Substances, Mortgagee may either declare a Default under this Mortgage or cause the Mortgaged Premises to be freed from the Hazardous Substances with the cost of the removal added to the Indebtedness. Mortgagor further agrees to keep the Mortgaged Premises and the ground water of the Mortgaged Premises free of Hazardous Substances and not to permit any tenant or third party to use, generate, manufacture, store, release, threaten release, or dispose of any Hazardous Substances at the Mortgaged Premises or in the groundwater of the Mortgaged Premises without the express written approval of Mortgagee, and any such release or disposal will be in compliance with all applicable laws and regulations. Mortgagor shall give Mortgagee prompt written notice of any claim by any person, entity or governmental agency that a release or disposal of Hazardous Substances has occurred at the Mortgaged Premises. Mortgagor, through its professional engineers and at its sole cost and expense, shall promptly and thoroughly investigate suspected contamination of the Mortgaged Premises by Hazardous Substances. Mortgagee shall have the right at any time to conduct a detailed inspection of the Mortgaged Premises during reasonable business hours and with reasonable notice and Mortgagor shall cooperate in the conduct thereof. The Mortgagor shall pay the Mortgagee's standard fee for this inspection in the event the Mortgagee determines such inspection is necessary. After the occurrence of a Default, Mortgagor shall give Mortgagee and its agents and its employees reasonable access to the Mortgaged Premises to remove Hazardous Substances if legally required or if reasonably necessary to prevent the existence of dangerous conditions, and Mortgagor agrees to indemnify and hold Mortgagee free and harmless from and against all loss, costs, damage, expense (including attorney's fees and costs) Mortgagee may sustain by reason of the assertion by any party of any claim in connection with such Hazardous Substances. The foregoing indemnification shall survive the satisfaction, release or extinguishment of the lien of this Mortgage, including, without limitation, any extinguishment of the lien of this Mortgage by foreclosure or deed in lieu thereof.

Mortgagor agrees that it will not install, or permit to be installed in the Mortgaged Premises, friable asbestos or any other Hazardous Substance, and with respect to any such material currently present in the Mortgaged Premises, Mortgagor shall promptly either remove any Hazardous Substance which any Environmental Law or any other law, regulation or order

97540107

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

require to be removed or otherwise comply with such Environmental Law, other law, regulation or order. If Mortgagor fails to so remove or otherwise comply, Mortgagee may declare a Default under this Mortgage and upon the expiration of applicable cure periods do whatever is necessary to eliminate the Hazardous Substances from the Mortgaged Premises or otherwise comply with applicable laws, regulations, or orders; and the costs thereof shall be added to the Indebtedness. In such event, Mortgagor shall give Mortgagee and its agents and employees reasonable access to the Mortgaged Premises to remove said asbestos or other Hazardous Substances. Mortgagor shall defend, indemnify, and save Mortgagee harmless from all costs and expenses (including consequential damages) asserted or proven against Mortgagee by any party, as a result of the presence of such Hazardous Substances and any removal or compliance with applicable Environmental Laws. The foregoing indemnification shall survive the satisfaction, release or extinguishment of the lien of this Mortgage, including, without limitation, any extinguishment of the lien of this Mortgage by foreclosure or deed in lieu thereof.

Mortgagor shall send to Mortgagee, within five (5) days of any receipt thereof, any citation, notice of violation, or other notice of potential liability relating to the Mortgaged Premises from any governmental or quasi-governmental authority regarding any Environmental Law or Hazardous Substance.

The term "Environmental Law(s)" shall mean and include, any federal, state or local law, statute, regulation or ordinance pertaining to health, industrial hygiene or the environmental or ecological conditions on, under or about the Mortgaged Premises, including without limitation each of the following: the Comprehensive Environmental Response, Compensation and Recovery Act of 1980, as amended, 42 U.S.C. Section 9601 et seq.; the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. Section 6901 et seq.; Toxic Substances Control Act, as amended, 15 U.S.C. Section 2601 et seq.; the Clean Air Act, as amended, 42 U.S.C. Section 1857, et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. Section 1251 et seq.; the Federal Hazardous Materials Transportation Act, 49 U.S.C. Section 1801 et seq.; the Illinois Environmental Protection Act, as amended, 415 ILCS 5/1 et seq.; the Illinois Responsible Property Transfer Act of 1988, as amended, 765 ILCS 90/1 et seq.; and the rules, regulations and ordinances of the U.S. Environmental Protection Agency and of all other federal, state and local agencies, boards, commissions, bodies and officers having jurisdiction over the Mortgaged Premises and Improvements or the use or operation thereof.

The term "Hazardous Substance(s)" shall mean and include, without limitation:

- a). Those substances included within the definitions of "hazardous substances", "hazardous materials", "toxic substance" or "solid waste" in any Environmental Law.
- b). Those substances listed in the U.S. Department of Transportation Table or amendments thereto (49 CFR 172.101) or by the U.S. Environmental

UNOFFICIAL COPY

Protection Agency (or any successor agency) as hazardous substances (40 CFR Part 302 and any amendments thereto);

c). Those other substances, materials and wastes which are or become regulated under any applicable federal, state or local law, regulation or ordinance or by any federal, state or local governmental agency, board, commission or other governmental body, or which are or become classified as hazardous or toxic by any such law, regulation or ordinance; and

d). Any material, waste or substance which is any of the following: (A) asbestos; (B) polychlorinated biphenyl; (C) designated or listed as a "hazardous substance" pursuant to Sections 307 or 311 of the Clean Water Act (33 U.S.C. Section 1251 et seq.); (D) explosive; or (E) radioactive.

Mortgagor hereby covenants and agrees to comply with any and all Federal, State or Local legislation, rules and regulations relating to environmental protection including, but not limited to, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended by the Superfund Amendments and Reauthorization Act of 1986, and such other legislation, rules and regulations as are in, or may come into, effect and apply to the Mortgagor, the Mortgagee, the transactions contemplated hereby or the collateral or any occupancy users of Mortgaged Premises, whether as lessees, tenants, licensees, or otherwise. The Mortgagor shall indemnify and hold Mortgagee harmless against any and all claims, costs or expenses relating to such environmental protection provisions subject to the exculpatory or non-recourse provisions contained herein, or contained in the Note or Other Loan Documents.

12. MORTGAGEE'S PERFORMANCE OF MORTGAGOR'S OBLIGATIONS: In the event of a default by Mortgagor in:

- a). the prompt discharge of any liens or encumbrances;
- b). defending the title to Mortgaged Premises;
- c). the payment of any Impositions;
- d). diligently and continuously pursuing the rebuilding or restoration of Mortgaged Premises in the event of loss by Casualty or Condemnation;
- e). the procurement and maintenance of Insurance Policies;
- f). the proper maintenance and preservation of Mortgaged Premises, including, but not limited to, the maintenance of the Mortgaged Premises free from all Hazardous Substances as described in Paragraph 11 herein;

97540107

UNOFFICIAL COPY

and such default is not cured or otherwise secured against, to the satisfaction of Mortgagee, Mortgagee may, at its election and without further demand or notice, pay and discharge such lien or encumbrance, defend the title to Mortgaged Premises, pay such Impositions (plus any interest and penalties thereon), procure Insurance Policies and pay the premiums therefore, complete such rebuilding or restoration and maintain and preserve Mortgaged Premises, in which event, all expenditures therefore, including attorneys' fees incurred by Mortgagee shall forthwith become due and payable to Mortgagee, together with interest thereon at Default Rate, which shall be added to and become a part of Indebtedness and shall be secured by the lien of this Mortgage, all without prejudice to the right of Mortgagee to declare Indebtedness immediately due and payable by reason of Mortgagor's Default and breach of the terms, covenants, conditions and agreements herein contained. Mortgagee shall have the right of determination as to the validity of any lien, encumbrance or Imposition attributable to or assessed against Mortgaged Premises and the payment thereof by Mortgagee shall establish its right to recover the amount so paid, with interest at Default Rate, subject to the provisions of Paragraph 13 following.

13. CONTEST OF LIENS OR ENCUMBRANCES: In the event Mortgagor desires to contest the validity of a lien, encumbrance or Imposition attributable to or assessed against Mortgaged Premises, it will:

- a). on or before thirty (30) days prior to the due date thereof, notify Mortgagee in writing that it intends to so contest the same, or cause the same to be contested;
- b). on or before the due date thereof, on demand, deposit with Mortgagee or a depository acceptable to Mortgagee insurance over any such lien, encumbrance or Imposition or other security (in form and content satisfactory to Mortgagee) which is sufficient in Mortgagee's judgment for the payment of the full amount of such lien, encumbrance or Imposition, or any balance thereof then remaining unpaid (or provide to Mortgagee such other indemnity as may be reasonably acceptable to it); and
- c). from time to time deposit additional security or indemnity, so that, at all times adequate security or indemnity will be available for the payment of the full amount of the lien, encumbrance or Imposition remaining unpaid, together with all interest, penalties, costs and charges accrued or accumulated thereon.

If the foregoing deposits are made and Mortgagor continues, in good faith, to contest the validity of such lien, encumbrance or Imposition, by appropriate legal proceedings which shall operate to prevent the collection thereof and the sale of the Mortgaged Premises or any part thereof, to satisfy the same, Mortgagor shall be under no obligation to pay such lien, encumbrance or Imposition until such time as the same have been decreed, by a final non-appealable court order, to be a valid lien on Mortgaged Premises. Mortgagee shall have full power and authority to reduce any such security or indemnity to cash and apply the amount so received to payment of

UNOFFICIAL COPY

any unpaid lien, encumbrance or Imposition after the same have been decreed by court order to be a valid lien on Mortgaged Premises to prevent the sale or forfeiture of Mortgaged Premises for non-payment thereof, without liability on said Mortgagee for failure to apply the security or indemnity so deposited, unless Mortgagor, in writing, requests the application thereof to the payment of the particular lien, encumbrance or Imposition for which such deposit was made. Any surplus deposit retained by Mortgagee after the payment of the lien, encumbrance or Imposition for which the same was made, shall be repaid to the Mortgagor unless a Default shall exist, in which event, such surplus shall be applied by Mortgagee on account of Indebtedness.

14. WAIVERS: To the full extent permitted by law, Mortgagor:

a) shall not, at any time, insist upon or plead or, in any manner whatsoever, claim, or take any advantage of any stay, exemption or extension law or any so-called "Moratorium Law" (now or at any time hereafter in force) nor claim, take or insist upon any benefit or advantage of or from any law (now or hereafter in force) providing for the valuation or appraisal of Mortgaged Premises, or any part thereof, prior to any sale or sales thereof to be made pursuant to any provision herein contained or to any decree, judgment or order of any court of competent jurisdiction or after such sale or sales, claim or exercise any rights pursuant to any statute now or hereafter in force to redeem Mortgaged Premises so sold, or any part thereof, or relating to the marshalling thereof, upon foreclosure sale or other enforcement hereof;

b) hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage, on its own behalf, and on behalf of all persons claiming or having an interest (direct or indirect) by, through or under Mortgagor and on behalf of each and every person acquiring any interest in or title to the Mortgaged Premises subsequent to the date hereof, it being the intent of Mortgagor hereby that any and all such rights of redemption of Mortgagor and all other persons are and shall be deemed to be hereby waived to the full extent permitted by applicable law; and

c) agrees that it will not, by invoking or utilizing any applicable law or laws or otherwise hinder, delay or impede the exercise of any right, power or remedy herein or otherwise granted or delegated to Mortgagee but will suffer and permit the exercise of every such right, power and remedy as though no such law or laws has, have been or will have been made or enacted.

15. COMPLIANCE WITH ILLINOIS MORTGAGE FORECLOSURE LAW: In the event that any provision in this Mortgage shall be inconsistent with any provision of the Illinois Mortgage Foreclosure Law, 735 ILCS 5/15-1101 et seq. (herein called the "Act") the provisions of the Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or

97540107

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Act.

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.

Without limiting the generality of the foregoing, all expenses incurred by Mortgagee to the extent reimbursable under the Act, whether incurred before or after any decree or judgment of foreclosure, and whether enumerated in Paragraph 20 of this Mortgage, shall be added to the indebtedness secured by this Mortgage or by the judgment of foreclosure.

16. PROHIBITED TRANSFERS AND PERMITTED SECONDARY FINANCING:

Prohibited Transfers: Mortgagor shall not, without the prior written consent of Mortgagee, which may be given or withheld in Mortgagee's sole and absolute discretion, create, effect, contract for, consent to or permit any Prohibited Transfer, either voluntarily or by operation of law. Notwithstanding the foregoing:

a) transfers of the beneficial interest in the Mortgagor among George D. Hanus and/or family members of George D. Hanus, or trusts for their benefit, for estate planning purposes will be permitted without the prior written consent of the Mortgagee and without payment of any fee or change in the terms of the Note, this Mortgage or the Other Loan Documents, provided that George D. Hanus, his heirs or any legatees or devisees of him or any testamentary trust created by him maintains management control of the beneficiary of the Mortgagor (the "Beneficiary") and provided that George D. Hanus, his heirs or any legatees or devisees of him or any testamentary trust created by him shall continue to remain personally liable to the extent of his liability under the Loan Documents; and

b) Mortgagee shall agree to a one time transfer of the Premises by the original Mortgagor to a purchaser who is not a public syndicator or a public syndication, who has a net worth acceptable to Mortgagee, and who has, in Mortgagee's sole discretion, a proven building management experience, with no change in the terms of the Note, this Mortgage or the Other Loan Documents, provided Mortgagee shall be paid a processing and assumption fee equal to one per cent (1%) of the then unpaid principal balance of the Note. If Mortgagee consents to such a transfer, and the purchaser agrees to assume all personal liability of the Beneficiary and George D. Hanus (collectively the "Guarantors") under the terms of the Note, this Mortgage and the Other Loan Documents (including but not limited to the Guaranty and Environmental Indemnity Agreement of even date herewith) then the Guarantors shall be released from all

97540107

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

personal liability they may have under the Note, this Mortgage and the Other Loan Documents (including but not limited to the Guaranty and Environmental Indemnity Agreement of even date herewith).

Any conveyance, sale, lease (other than leases in the ordinary course of business), assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation (or agreement to any of the foregoing) of any of the following properties, rights or Interests which occurs, is granted, accomplished, attempted or effectuated, superior or inferior to the lien of the Mortgage, shall constitute a "Prohibited Transfer":

i). the Mortgaged Premises, or any part thereof or interest therein, excepting only sales or other dispositions of personal property located on the Mortgaged Premises which sales or other dispositions are permitted under the terms hereof; or

ii). forty-nine percent (49%) or more of the beneficial interest of Mortgagor (on a cumulative basis), or any part thereof or interest therein,

in each case whether any such conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest, encumbrance or alienation is effected directly, indirectly, voluntarily or involuntarily, by Mortgagor, the beneficiary of Mortgagor, or by any third party, by operation of law or otherwise; provided, however, that the foregoing provisions of this paragraph shall not apply (i) to this Mortgage or any liens expressly permitted in this Mortgage; or (ii) to the lien of current taxes and assessments not in default. If Mortgagee consents to an exception to this Paragraph 16, Mortgagor shall pay to Mortgagee a fee equal to one per cent (1%) of the then Principal Balance (as defined in the Note) and Mortgagor shall reimburse Mortgagee for all costs, including legal fees, incurred in negotiating and documenting any such consent.

In determining whether or not to make the loan secured hereby, Mortgagee examined the creditworthiness, the background and the experience of the Beneficiary, found them acceptable and relied and continues to rely upon same as the means of maintaining the value of the Mortgaged Premises and the repayment of the Note. The Beneficiary is well-experienced in borrowing money and owning and operating property such as the Mortgaged Premises and is ably represented by an attorney at law in the negotiation and documentation of the Indebtedness, and bargained at arm's length and without duress of any kind for all of the terms and conditions of the loan, including this provision. Beneficiary further recognizes that any secondary or junior financing placed upon the Mortgaged Premises (a) may divert funds which would otherwise be used to pay the Note secured hereby; (b) could result in acceleration and foreclosure by any such junior encumbrancer which would force Mortgagee to take measures and incur expenses to protect its security; (c) would detract from the value of the Mortgaged Premises should Mortgagee come into possession thereof with the intention of selling same; and (d) would impair Mortgagee's right to accept a deed in lieu of foreclosure, as a foreclosure by Mortgagee would be necessary to clear the title to the Mortgaged Premises.

UNOFFICIAL COPY

In accordance with the foregoing and for the purposes of (i) protecting Mortgagee's security, both of repayment of the Indebtedness and the value of the Mortgaged Premises; (ii) giving the Mortgagee the full benefit of its bargain with Beneficiary; (iii) allowing the Mortgagee to raise the interest rate due under Note and collecting assumption fees; and (iv) keeping the Mortgaged Premises free of subordinate financing liens, Beneficiary agrees that if this paragraph is deemed a restraint on alienation, it is a reasonable one.

17. DEFAULT: If one or more of the following events (herein called "Defaults") shall occur:

a). If the Mortgagor shall fail to make any payment of the whole or any part of any of the several installments when due under the Note, this Mortgage or Other Loan Documents, and such failure shall continue for ten (10) days after the due date; or

b). If any default be made in the performance of any of the terms, agreements, covenants or conditions contained in this Mortgage or in the performance of any of the terms, agreements, covenants or conditions contained in Other Loan Documents, in each case, after the expiration of any period of grace expressly allowed for the cure of such default in such other document or instrument, or if no express cure period is provided, then in each case, if such default shall continue for thirty (30) days after written notice thereof by Mortgagee to Mortgagor; provided that, in the event of any such Default which cannot be reasonably cured within such thirty (30) day period, there shall be no Default hereunder if, within such thirty (30) day period, Mortgagor shall commence such cure and diligently pursue the same until completion, but in no event shall such period exceed ninety (90) days after the expiration of the initial thirty (30) day period;

c). The occurrence of a Prohibited Transfer;

d). If any of the information contained in any documentation provided to Mortgagee by Mortgagor or Beneficiary of any of its agents or shareholders in conjunction with the Indebtedness shall not be true, accurate and complete in all material respects;

e). If (and for the purpose of this Subparagraph 17 (e) only, the term "Mortgagor" shall mean and include not only Mortgagor, but the Beneficiary of Mortgagor, and if title is conveyed in the future with the consent of Mortgagee, any future beneficiary of a trust, the trustee of which is the Mortgagor, any general partner in a partnership Mortgagor or in a partnership which is a beneficiary of a trustee Mortgagor, any owner of more than ten percent (10%) of the capital stock in a corporate Mortgagor or corporation which is the beneficiary of a trust, the

97540107

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

trustee of which is the Mortgagor, and each person who, as guarantor, co-maker or otherwise, shall be or become liable for or obligated upon all or any part of the Indebtedness or any of the covenants or agreements contained herein):

i). Mortgagor shall file a voluntary petition in bankruptcy or for arrangement, reorganization or other relief under the Federal Bankruptcy Act or any similar law, state or federal, now or hereafter in effect;

ii). Mortgagor shall file a pleading in any proceeding admitting insolvency, bankruptcy, or inability to pay its debts as they mature;

iii). Within thirty (30) days after the filing against Mortgagor of any involuntary proceeding under the Federal Bankruptcy Act or similar law, state or federal, now or hereafter in effect, such proceedings shall not have been vacated;

iv). All or a substantial part of Mortgagor's assets are attached, seized, subjected to a writ or distress warrant, or are levied upon, unless such attachment, seizure, writ, warrant or levy is vacated within thirty (30) days;

v). Mortgagor shall be adjudicated a bankrupt;

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

vii). Any order appointing a receiver, trustee or liquidator of Mortgagor or all or a major part of Mortgagor's property or the Mortgaged Premises is not vacated within thirty (30) days following the entry thereof;

then Mortgagee is hereby authorized and empowered, at its option and without affecting the lien hereby created or the priority of said lien or any other right of Mortgagee hereunder, to declare, without further notice, all Indebtedness to be immediately due and payable with interest thereon at the Default Rate, whether or not such Default be thereafter remedied by Mortgagor, and Mortgagee may immediately proceed to foreclose this Mortgage and to exercise any right, power or remedy provided by this Mortgage, the Note or any Other Loan Document, or by law or in equity.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

18. REMEDIES NOT EXCLUSIVE: No remedy or right of Mortgagee hereunder or pursuant to Note or Other Loan Documents or otherwise available under applicable law, shall be exclusive of any other remedy or right but each such remedy or right shall be in addition to every other remedy or right now or hereafter existing at law or in equity pursuant thereto. No delay in the exercise of or omission to exercise any remedy or right accruing upon occurrence of a Default shall impair any such remedy or right or be construed to be a waiver of any such default or an acquiescence therein nor shall the same effect any subsequent Default of the same or a different nature. Every such remedy or right may be exercised concurrently or independently, when and as often as may be deemed expedient by Mortgagee. All obligations of Mortgagor and all rights, powers and remedies of Mortgagee expressed herein shall be in addition to and not in limitation of those provided by law and in this Mortgage and Other Loan Documents.

19. REMEDIES: Upon the occurrence of a Default, Mortgagee shall have the right to immediately foreclose the lien of this Mortgage in accordance with the Act. Upon the filing of any complaint by reason thereof, the court in which the same is filed may:

- a). upon application of Mortgagee or at any time thereafter;
- b). either before or after foreclosure sale and without notice to Mortgagor or to any party claiming under Mortgagor;
- c). without regard to the solvency or insolvency at the time of such application of any person then liable for the payment of Indebtedness, or any part thereof;
- d). without regard to the then value of Mortgaged Premises or whether the same shall then be occupied in whole or in part, as a homestead by the owner of the equity of redemption; and
- e). without requiring any bond from the complainant in such proceedings;

appoint a receiver for the benefit of Mortgagee, with power to take possession, charge and control of Mortgaged Premises, to lease the same, keep Mortgaged Premises insured and in good repair and collect all rentals during the pendency of such foreclosure suit and, in the event of foreclosure sale and a deficiency in the proceeds received therefrom, during any period of redemption. The court may, from time to time, authorize such receiver to apply the net amounts remaining in its possession, after deducting reasonable compensation for itself and its counsel to be allowed by the court, in payment (in whole or in part) of any part or all of Indebtedness, including, without limitation, the following, in such order of application as Mortgagee may elect:

- i). to the payment of Indebtedness;

97540107

UNOFFICIAL COPY

ii). to any amount due upon any decree entered in any suit foreclosing this Mortgage;

iii). to costs and expenses of foreclosure and litigation upon Mortgaged Premises;

iv). to the payment of premiums due on Insurance Policies, repairs, Impositions (and any interest, penalties and costs thereon) or any other lien or charge upon Mortgaged Premises which may be or become superior to the lien of this Mortgage or of any decree foreclosing the same, and

v). to the payment of all sums advanced by Mortgagee to cure or attempt to cure any Default by Mortgagor in the performance of any obligation or condition contained herein, in Note, Other Loan Documents or otherwise, to protect the security provided herein and therein, with interest on such advances at Default Rate.

Any overplus of the proceeds of foreclosure sale shall then be paid to Mortgagor. This Mortgage may be foreclosed at any time against all or successively against any part or parts of Mortgaged Premises, as Mortgagee may elect and this Mortgage and the right of foreclosure hereunder shall not be impaired or exhausted by one or any foreclosure or by one or any sale and may be foreclosed successively and in parts until all of Mortgaged Premises shall have been foreclosed and sold. In the event of any foreclosure of Mortgaged Premises (or commencement of or preparation for the same) in any court, all expenses of every kind paid or incurred by Mortgagee for the enforcement, protection or collection of this security, including reasonable costs, attorneys' fees, stenographers' fees, costs of advertising, title charges and other reasonable costs and expenses shall be paid by Mortgagor.

20. POSSESSORY RIGHTS OF MORTGAGEE: Upon the occurrence of a Default, whether before or after the institution of legal proceedings to foreclose the lien of this Mortgage or any sale thereunder, Mortgagee shall be entitled to request that a receiver be appointed as set forth in 735 ILCS 5/15-1705 and in addition thereto, in its sole discretion to the extent permitted by law, perform any of the following:

a). enter and take actual possession of Mortgaged Premises, Leases and the rents payable thereto, personally or by its agents or attorneys and excluding Mortgagor therefrom;

b). with or without process of law, enter upon and take and maintain possession of all of the documents, books, records, papers and accounts of Mortgagor relating thereto;

UNOFFICIAL COPY

c). as attorney-in-fact or agent of Mortgagor, or in its own name as Mortgagee and pursuant to the powers herein granted, hold, operate, manage and control Mortgaged Premises and Leases and collect all rentals payable pursuant thereto and conduct the business, if any, thereof, either personally or by its agents, contractors or nominees, with full power to use such measures, legal or equitable, as, in its discretion, may be deemed proper or necessary to enforce the terms and conditions of Leases and the rentals payable pursuant thereto (including actions for the recovery of rents, actions in forcible detainer and actions in distress of rent);

d). cancel or terminate any Lease or sublease for any cause or for any reason which would entitle Mortgagor to cancel the same;

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

f). make all necessary or proper repairs, decoration, renewals, replacements, alterations, additions, betterments and improvements to Mortgaged Premises which, in Mortgagee's sole discretion, may seem appropriate;

g). insure and re-insure Mortgaged Premises against all risks incidental to Mortgagee's possession, operation and management thereof; and

h). perform such other acts in connection with the management and operation of Mortgaged Premises as Mortgagee, in its sole discretion, may deem proper;

Mortgagor hereby granting full power and authority to Mortgagee to exercise each and every of the rights, privileges and powers contained herein at any and all times following the occurrence of a Default.

Mortgagee, in the exercise of the rights and powers conferred upon it hereby, shall have full power to use and apply the rentals collected by it to the payment or on account of the following, in such order as it may determine:

i). operating expenses of Mortgaged Premises, including the cost of management and leasing thereof (which shall include reasonable compensation to Mortgagee and its agents or contractors, if management be delegated to agents or contractors, and reasonable leasing commissions and other reasonable compensation and expenses in seeking and procuring tenants and entering into Leases), established claims for damages, if any, and premiums on Insurance Policies;

UNOFFICIAL COPY

ii). Impositions, costs of repairs, decorating, renewals, replacements, alterations, additions or betterments and improvements of Mortgaged Premises, including the cost, from time to time, of installing, replacing or repairing Mortgaged Premises and of placing Mortgaged Premises in such condition as will, in the reasonable judgment of Mortgagee, make the same readily rentable; and

iii). Indebtedness, or any part thereof.

21. OTHER REMEDIES: Whenever any Default shall be existing, Mortgagee may exercise, from time to time, any rights and remedies available to it pursuant to applicable law. Mortgagor shall, promptly upon request by Mortgagee, assemble all goods, wares, merchandise, furniture, fixtures, equipment and supplies owned by it and situated on and used and useful in the operation of Mortgaged Premises ("Personal Property") and make the same available to Mortgagee at such place or places reasonably convenient for Mortgagee and Mortgagor, as Mortgagee shall designate. Any notification required by law of intended disposition by Mortgagee of any part of Mortgaged Premises shall be deemed reasonably and properly given if mailed as herein provided at least twenty (20) days prior to such disposition. Without limiting the foregoing, whenever a Default shall exist, Mortgagee may, with respect to Personal Property, without further notice, advertisement, hearing or process of law of any kind:

a). notify any person obligated on Personal Property to perform, directly for Mortgagee, its obligations thereunder;

b). enforce collection of any part of Personal Property by suit or otherwise and surrender, release or exchange all or any part thereof or compromise, extend or renew, for any period (whether or not in excess of the original period), any obligations of any nature of any party with respect thereto;

c). endorse any checks, drafts or other writings in the name of Mortgagor to permit collection of Personal Property and control of any proceeds thereof;

d). enter upon any part of Mortgaged Premises where Personal Property may be located and take peaceful possession of and remove the same;

e). sell any part or all of Personal Property free of all rights and claims of Mortgagor therein and thereto, at any public or private sale; and

f). bid for and purchase any part or all of Personal Property at any such sale

Any proceeds of any disposition by Mortgagee of any part of Personal Property may be applied by Mortgagee to the payment of expenses incurred in connection therewith, including reasonable

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

attorneys' fees and legal expenses, and any balance of such proceeds shall be applied by Mortgagee in the payment of such part of Indebtedness and in such order of application as Mortgagee may, from time to time, elect. Mortgagee may exercise, from time to time, any rights and remedies available to it pursuant to the Uniform Commercial Code, other applicable laws in effect from time to time or otherwise available to it by reason of any applicable law. Mortgagor hereby expressly waives presentment, demand, notice of dishonor and protest in connection with Indebtedness and, to the fullest extent permitted by applicable law, any and all other notices, advertisements, hearings or process of law in connection with the exercise by Mortgagee of any of its rights and remedies hereunder.

Mortgagor hereby constitutes Mortgagee its attorney-in-fact, with full power of substitution, to take possession of Personal Property upon the occurrence of a Default hereunder, as Mortgagee, in its sole discretion (reasonably exercised) deems necessary or proper, to execute and deliver all instruments required by Mortgagor to accomplish the disposition of Personal Property, or any part thereof, which power of attorney is a power coupled with an interest, irrevocable until such time as Indebtedness is paid in full.

22. NON-LIABILITY OF MORTGAGEE: Notwithstanding anything contained herein, Mortgagee shall not be obligated to perform or discharge, and does not hereby undertake to perform or discharge, any obligations, duty or liability of Mortgagor pursuant to Leases or otherwise and Mortgagor, and Beneficiary, by signing the direction to Mortgagor to execute this Mortgage, the Note and Other Loan Documents shall and does hereby agree to indemnify and hold Mortgagee harmless of and from any and all liability, loss or damage which it may or might incur pursuant thereto or by reason of its exercise of its rights hereunder 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 with respect to Mortgaged Premises except in the event such loss, liability or damage is caused by the willful misconduct, bad faith or negligence of Mortgagee, its employees or agents. Prior to the exercise of its rights hereunder Mortgagee shall not have responsibility for the control, care, management or repair of Mortgaged Premises nor shall Mortgagee be responsible or liable for any negligence in the management, operation, upkeep, repair or control of Mortgaged Premises resulting in loss, injury or death to any tenants, licensee, employee or stranger upon Mortgaged Premises. No liability shall be enforced or asserted against Mortgagee in the exercise of the powers herein granted to it and Mortgagor expressly waives and releases any such liability. In the event Mortgagee incurs any such liability, loss or damage prior to the exercise of its rights hereunder pursuant hereto and to any Lease or in the defense of any claim or demand, Mortgagor agrees to reimburse Mortgagee, immediately upon demand, for the amount thereof, including costs, expenses and reasonable attorneys' fees, except in the event such liability, loss or damage is caused by the willful misconduct, bad faith or negligence of Mortgagee, its employees or agents.

23. CHANGE OF LAW: If, by the laws of the United States of America, or of any state or municipality having jurisdiction over Mortgagee, Mortgagor or the Mortgaged Premises,

UNOFFICIAL COPY

any tax is imposed or becomes due in respect of the issuance of the Note or the execution, delivery and/or recording of any of the Other Loan Documents, Mortgagor shall pay such tax in the manner required by such law. In the event that any law, statute, rule, regulation, order or court decree has the effect of deducting from the value of Mortgaged Premises, for the purpose of taxation, the amount of any lien, encumbrance or Imposition or imposing upon Mortgagee the payment of the whole or any part thereof or changing, in any way, the laws relating to the taxation of mortgages or debts secured by mortgages or the Mortgagee or Mortgagee's interest in Mortgaged Premises or the manner of collection of liens, encumbrances or Impositions, so as to affect this Mortgage, Indebtedness or Mortgagee, Mortgagor shall, in any such event, upon demand by Mortgagee, pay such liens, encumbrances or Impositions or reimburse Mortgagee therefor, PROVIDED, HOWEVER, that if, in the opinion of counsel for Mortgagee:

- a) it may be unlawful to require Mortgagor to make such payment or reimbursement; or
- b) the making of such payment may result in the payment of interest beyond the maximum amount permitted by law;

then, and in such event, Mortgagee may elect, by notice in writing given to Mortgagor, to declare Indebtedness, together with interest thereon, but free of any prepayment premium, to be and become due and payable within sixty (60) days from the giving of such notice. Notwithstanding the foregoing, it is understood and agreed that Mortgagor is not obligated to pay any portion of Mortgagee's federal or state income tax.

24. COMPLIANCE WITH AGREEMENTS: Mortgagor shall pay promptly and keep, observe, perform and comply with all covenants, terms and provisions of operating agreements, Leases, instruments and documents relating to Mortgaged Premises or evidencing or securing any indebtedness secured thereby and shall observe all covenants, conditions and restrictions affecting the same.

25. ASSIGNMENT OF LEASES AND RENTS: The Mortgagor, as additional security for the payment of the Indebtedness, has sold, transferred and assigned to the Mortgagee, its successors and assigns, all of its interest in a certain Lease or Leases demising all or a portion of the Mortgaged Premises, together with the rents secured thereby, said Lease or Leases being identified as follows:

<u>Lessee</u>	<u>Date of Lease</u>	<u>Lease Termination</u>
Tandy Corporation	December 22, 1988	April 30, 1999
United Farmstands Corporation	March 17, 1997	January 31, 2000

Mortgagor expressly covenants and agrees that if the Mortgagor, as Lessor under said Lease or Leases so assigned, fails to perform and fulfill any term, covenant, condition or

UNOFFICIAL COPY

provision in said Lease, or Leases or any of them, on its part to be performed or fulfilled, at the times and in the manner in said Lease or Leases provided, or if the Mortgagor suffers or permits to occur any breach or default under the provisions of the Assignment of Rents and Leases of even date herewith given as additional security for the payment of the Indebtedness, or if the Mortgagor fails to fully protect, insure, preserve and cause continued performance or fulfillment of the terms, covenants or provisions in said Lease or Leases required to be performed or fulfilled by the Lessee or any of the Lessees therein or if the Mortgagor without Mortgagee's prior agreement permits or approves an assignment by Lessee of the said Lease or Leases or a subletting of all or any part of the premises demised in the said Lease or Leases, then in any such event, at the option of the Mortgagee, and without notice to the Mortgagor, such breach or default shall constitute a Default hereunder and all unpaid Indebtedness shall, notwithstanding anything in said Note or in this Mortgage to the contrary, become due and payable as in case of other Defaults.

In the event the said Mortgagor, as the Lessor in said Lease or Leases, shall neglect or refuse to perform, observe and keep all of the covenants, provisions and agreements contained in said Lease or Leases, the Mortgagee may perform and comply with any such lease covenants, agreements and provision, in which event all costs and expenses incurred by the Mortgagee in complying with such covenants, agreements and provisions, shall become a part of the Indebtedness secured by this Mortgage and recoverable as such in all respects.

In addition to the Leases assigned hereinabove, upon the written request of Mortgagee, Mortgagor will assign to Mortgagee, as additional security for Indebtedness, future leases entered into with respect to the Mortgaged Premises.

26. SECURITY AGREEMENT: This Mortgage shall be deemed a security agreement, as defined in the Illinois Uniform Commercial Code, and establishes a security interest, in favor of Mortgagee in and to all property owned by Mortgagor and situated on Mortgaged Premises, including all personal property, fixtures and goods affecting Mortgaged Premises, either referred to or described herein or in any way connected with the use or enjoyment thereof owned by Mortgagor.

27. EXECUTION OF SEPARATE SECURITY AGREEMENT AND FINANCING STATEMENTS: In addition to this Mortgage being deemed a Security Agreement as set forth in the preceding paragraph, Mortgagor and Beneficiary have, as additional security for the payment of Indebtedness, executed and delivered to the Mortgagee a Security Agreement of even date herewith granting to Mortgagee a security interest in and to:

a). all of the furniture, furnishings, fixtures, equipment, machines, apparatus, supplies and personal property of every nature and description, and all replacements thereof and substitutions therefor, and the proceeds thereof, now or hereafter located in Mortgaged Premises, excepting from the foregoing however,

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

any furniture, fixtures business equipment or articles of personal property belonging to any present or future tenant or lessee of the said premises;

b). all of the rents, issues and profits due, or which may hereafter become due or payable under the terms and provisions of the lease described and assigned under Paragraph numbered 25 hereinabove;

and further, executed and delivered Financing Statements pursuant to the Uniform Commercial Code, State of Illinois. Mortgagor agrees from time to time to execute such additional Security Agreements and Financing Statements as may be necessary to vest in Mortgagee a security interest in and to the property hereinabove described, the lease assigned under Paragraph numbered 25 above, until Indebtedness be paid in full.

28. FINANCIAL STATEMENTS: Beneficiary of Mortgagor shall keep and maintain books and records of account in accordance with generally accepted accounting practices consistently applied. The Beneficiary of Mortgagor shall furnish, or cause to be furnished to Mortgagee:

a). if specifically requested by Mortgagee, quarterly, within thirty (30) days of the close of each quarter, income and expense statements which shall include current cash flow and up to date payables and receivables for the Mortgaged Premises, certified to be true and correct by the Beneficiary of Mortgagor;

b) annually, within one hundred twenty (120) days after the end of each calendar year, annual financial statements covering the operations of the Mortgaged Premises, including a balance sheet and supporting schedules and containing a detailed statement of income and expenses;

c). annually, within one hundred twenty (120) days after the close of each of their fiscal years' the annual financial statements of each of the tenants of all or any portion of the Mortgaged Premises; and

d). annually, within one hundred twenty (120) days after the close of each calendar year a certified financial statement of the Mortgagor, the Beneficiary and George D. Hanus, with an affidavit of George D. Hanus stating such financial statements are true and correct.

Mortgagor and the Beneficiary of Mortgagor shall pay to the Mortgagee a penalty of One Thousand and No/100 Dollars (\$1,000.00) each time any of the above referenced financial statements are not received by Mortgagee within the time period specified.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

29. PAYMENT AND PERFORMANCE BY MORTGAGOR: In the event Mortgagor shall fail to pay or perform any of its obligations herein contained (including the payment of expenses of foreclosure and court costs), Mortgagee may, but need not, following the occurrence of a Default, make payment or perform (or cause to be paid or performed) any obligation of Mortgagor hereunder, in any form and manner deemed reasonably expedient by Mortgagee, as agent or attorney-in-fact of Mortgagor, and any amount so paid or expended (plus reasonable compensation to Mortgagee for its out-of-pocket and other expenses for each matter for which it acts hereunder), with interest thereon at Default Rate, shall be and become a part of Indebtedness and shall be paid to Mortgagee upon demand. By way of illustration and not in limitation of the foregoing, Mortgagee may, but need not:

- a). collect rentals due and owing pursuant to Leases and prosecute the collection of Personal Property or the proceeds thereof;
- b). purchase, discharge, compromise or settle any Imposition, lien or any other lien, encumbrance, suit, proceeding, title or claim thereof; and
- c). redeem from any tax sale or forfeiture affecting Mortgaged Premises or contest any Imposition.

In making any payment or securing any performance relating to any obligation of Mortgagor hereunder, Mortgagee, so long as it acts in good faith, shall have the sole discretion as to the legality, validity and amount of any lien, encumbrance or Imposition and of all other matters necessary to be determined in satisfaction thereof. No such action of Mortgagee shall be considered a waiver of any right accruing to it on account of the occurrence of any Default.

30. RELEASE: Upon payment in full of Indebtedness, at the time and in the manner herein provided, this conveyance shall be null and void and an appropriate instrument of reconveyance or release shall promptly be made by Mortgagee to Mortgagor, at Mortgagor's expense.

31. CARE: Mortgagee shall be deemed to have exercised reasonable care in the custody and preservation of any part of Mortgaged Premises in its possession if it takes such action for that purpose, as Mortgagor requests in writing, but failure of Mortgagee to comply with any such request shall not, of itself, be deemed a failure to exercise reasonable care and no failure of Mortgagee to preserve or protect any rights with respect to Mortgaged Premises against prior parties or do any act with respect to Mortgaged Premises against prior parties or do any act with respect to the preservation thereof not so requested by Mortgagor shall be deemed a failure to exercise reasonable care in the custody or preservation of Mortgaged Premises.

32. MORTGAGOR'S CONTINUING LIABILITY: This Mortgage is intended only as security for Indebtedness and anything herein contained to the contrary notwithstanding.

UNOFFICIAL COPY

a). Mortgagor shall be and remain liable to perform all of the obligations assumed by it pursuant hereto, and

b). Mortgagee shall have no obligation or liability by reason of or arising out of this Mortgage and shall not be required or obligated, in any manner, to perform or fulfill any of the obligations of Mortgagor pursuant hereto.

33. MECHANIC'S LIENS: Notwithstanding anything contained in this Mortgage to the contrary, the lien of any mechanic or materialman shall not be permitted to attach to or remain against Mortgaged Premises unless the same is insured to Mortgagee's reasonable satisfaction within thirty (30) days after notice to Mortgagor.

34. INSPECTIONS: Mortgagee, by any authorized agent or employee and for the protection of its interest in Mortgaged Premises, is hereby authorized and empowered to enter in and upon Mortgaged Premises at any and all reasonable times, for the purpose of inspecting the same and ascertaining the condition thereof.

35. INDEMNIFICATION: Mortgagor and Beneficiary shall indemnify Mortgagee from all losses, damages and expenses, including reasonable attorneys' fees, incurred in connection with any suit or proceeding in or to which Mortgagee maybe made a party for the purpose of protecting the lien of this Mortgage.

36. BUSINESS LOAN: Mortgagor represents and agrees that the proceeds of the loan evidenced by Note and secured by this Mortgage will be used for business purposes and this Mortgage is exempt from limitations upon lawful interest, pursuant to the terms of Section 815 ILCS 20/4.

37. TENDER OF PAYMENT AFTER DEFAULT: Upon default by Mortgagor and following the acceleration of the maturity of Indebtedness, a tender of payment of the amount necessary to satisfy the Indebtedness by Mortgagor or by anyone on behalf of Mortgagor, shall constitute an evasion of the prepayment terms of the Note and such payment shall be deemed a voluntary prepayment under the Note and include, to the extent permitted by law, an amount equal to the prepayment premium due under the Note.

38. GOVERNING LAW: This Mortgage has been delivered in the State of Illinois and shall be construed in accordance with and governed by the laws of the State of Illinois. Whenever possible, each provision of this Mortgage shall be interpreted in such a manner as to be effective and valid pursuant to applicable law; however, if the same shall be prohibited by or invalid thereunder, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder thereof or the remaining provisions of this Mortgage.

UNOFFICIAL COPY

39. MARSHALLING OF ASSETS: At any foreclosure sale, the Mortgaged Premises may, at Mortgagee's option, be offered for sale for one total price, and the proceeds of such sale accounted for in one account without distinction between the items of security or without assigning to them any proportion of such proceeds, Mortgagor hereby waiving the application of any doctrine of marshalling; and, in case Mortgagee, in the exercise of the power of sale herein given, elects to sell the Mortgaged Premises in parts or parcels, said sales may be held from time to time, and the power shall not be fully executed until all of the Mortgaged Premises not previously sold shall have been sold.

40. ADDITIONAL DOCUMENTS, POWER OF ATTORNEY: Mortgagor, from time to time, will execute, acknowledge and deliver to Mortgagee upon request, and hereby irrevocably appoints Mortgagee its attorney-in-fact to execute, acknowledge, deliver and if appropriate file and record, such security agreements, assignments for security purposes, assignments absolute, financing statements, affidavits, certificates and other documents, in form and substance satisfactory to Mortgagee, as Mortgagee may request in order to perfect, preserve, continue, extend or maintain the assignments herein contained, the lien and security interest under this Mortgage or Other Loan Documents, and the priority thereof. Mortgagor will pay to Mortgagee upon request therefore all costs and expenses incurred in connection with the preparation, execution, recording and filing of any such document.

41. TIME IS OF THE ESSENCE: It is specifically agreed that time is of the essence of this Mortgage.

42. CORRECTIVE DOCUMENTS: Mortgagor shall, at the request of Mortgagee, promptly correct any defect, error or omission which may be discovered in the contents of this Mortgage or in the execution or acknowledgment hereof or in any other instrument executed in connection herewith or in the execution or acknowledgment of such instrument and will execute and deliver any and all additional instruments as may be requested by Mortgagee to correct such defect, error or omission.

43. CONSENT OR APPROVAL: The consent by Mortgagee in any single instance shall not be deemed or construed to be Mortgagee's consent in any like matter arising at a subsequent date and the failure of Mortgagee to promptly exercise any right, power, remedy or consent provided herein or at law or in equity shall not constitute or be construed as a waiver of the same nor shall Mortgagee be estopped from exercising such right, power, remedy or consent at a later date.

Any consent or approval required of and granted by Mortgagee pursuant hereto shall:

- a). be narrowly construed to be applicable only to Mortgagor and the facts identified in such consent or approval and no third party shall claim any benefit by reason thereof, and

UNOFFICIAL COPY

b) not be deemed to constitute Mortgagee a venturer or partner with Mortgagor whatsoever nor shall privity of contract be presumed to have been established with any such third party.

If, to consider a request by Mortgagor it is necessary that Mortgagee deem it to be to its best interests to retain the assistance of any person, firm or corporation (such as, but not limited to, attorneys, appraisers, engineers, surveyors, etc.) Mortgagor shall reimburse Mortgagee for all costs incurred in connection with the employment of such parties.

44 NOTICES: Any notices, demands and requests required or desired to be given hereunder shall be in writing and shall be deemed properly served if delivered in person or by United States registered or certified mail, return receipt requested, postage prepaid [which shall be deemed received three (3) business days following the postmark thereof], or by Federal Express or other comparable overnight service, addressed as follows:

If to Mortgagee: Mutual Trust Life Insurance Company
1200 Jorie Boulevard
Oak Brook, Illinois 60522
Attention: Mr. Michael R. Anderson

With copies to: GMAC Commercial Mortgage Corporation
Suite 400, 100 South Wacker Drive
Chicago, Illinois 60606
Attention: Ms. Ann Cassidy
Senior Vice President, Loan Servicing

If to Mortgagor: Amalgamated Bank of Chicago
One West Monroe Street
Chicago, Illinois 60603
Attention: Land Trust Department

With copies to: George D. Hanus
333 West Wacker Drive
Chicago, Illinois 60606

and

Thomas H. Page, Esq.
Barack Ferrazzano Kirschbaum
Perlman & Nagelberg
333 West Wacker Drive
Chicago, Illinois 60606

97540107

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

45. BENEFIT: All grants, conditions and provisions hereof shall apply, extend to and be binding upon Mortgagor and all persons claiming any interest in Mortgaged Premises by, through or under Mortgagor, and shall inure to the benefit of Mortgagee, its successors and assigns.

46. EXCULPATION: This Mortgage is executed by the Mortgagor, Amalgamated Bank of Chicago, not personally, but as Trustee under the terms of Trust Agreement designated above, solely in the exercise of the power and authority conferred upon and vested in it as such Trustee (and Mortgagor hereby warrants that it possesses full power and authority to execute this instrument) and it is expressly understood and agreed that in the event of any Default under the terms of this Mortgage, or the Note secured hereby, or Other Loan Documents, Mortgagee agrees that it shall neither seek nor take any deficiency or monetary judgment against Mortgagor, or against any property of Mortgagor other than the property described herein and in Other Loan Documents, and nothing herein contained or contained in said Note or Other Loan Documents shall be construed as creating any personal liability on the Mortgagor, its agents, or employees, all such personal liability being expressly waived by the Mortgagee for itself and its successors and assigns, and that so far as Mortgagor, and its successors in trust personally are concerned, except as hereinafter set forth, and set forth in a certain Environmental Indemnity Agreement and Guaranty Agreement, both of even date herewith, Mortgagee, its successors and assigns, shall look solely to the Mortgaged Premises, and to the income, proceeds and avails thereof for the payment of Indebtedness.

It is further understood and agreed, however, that nothing contained in the preceding paragraph shall in any manner or way release, affect or impair:

- a). the existence of the debt evidenced by Note;
- b). the enforceability of the liens and security interests created by this Mortgage and Other Loan Documents;
- c). the right of the Mortgagee to recover or receive from the Beneficiary and George D. Hanus (collectively the "Guarantors"), (or to recover or receive other property of Guarantors in lieu thereof):
 - i). any and all of Mortgagee's costs, expenses, damages or liabilities, including, without limitation, all reasonable attorney fees, directly or indirectly arising out of or attributable to any fraud or misrepresentation by Guarantors;
 - ii). an amount necessary to repair any damage to the Mortgaged Premises which is caused by the willful or wanton act or omission of Guarantors;

97540107

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

iii). any rental income, other income, or security deposits received by Mortgagor or Guarantors from and after the occurrence of a Default from tenants of all or any part of the Mortgaged Premises not paid over to Mortgagee on account of sums due under the Note and Mortgage or as otherwise applied by Mortgagor or Guarantors on account of the expenses of the Mortgaged Premises or repairs and maintenance of the same;

iv). any sums expended by Mortgagee in the performance or compliance of all covenants, agreements, and provisions of any lease specifically assigned to Mortgagee as additional security for the Indebtedness which is so expended by reason of Guarantors' neglect or refusal to so perform said obligations or to prevent the Mortgagee from recovering any rentals lost as a result of Guarantors' failure to perform said obligations;

v). any sums expended by Mortgagee, exceeding sums deposited pursuant to Paragraph 4 hereof, to pay Impositions or premiums on Insurance Policies;

vi). any funds expended by Mortgagee to replace personal property of the Mortgagor or the Beneficiary removed from Mortgaged Premises and not replaced by Mortgagor or Guarantors;

vii). any Proceeds or Awards received by Mortgagor or Guarantors and not applied in accordance with Paragraphs 6 or 7 hereof;

viii). any and all of Mortgagee's costs, expenses, damages or liabilities, including, without limitation, all reasonable attorney fees, directly or indirectly arising out of or attributable to the use, generation, storage, release, discharge, disposal or presence on, under or about the Mortgaged Premises of any Hazardous Substances or other violation of Environmental Laws;

ix). any and all of Mortgagee's costs, expenses, damages or liabilities, including, without limitation, all reasonable attorney fees, directly or indirectly arising out of or attributable to Mortgagor's or Beneficiary's failure to comply with the Americans with Disabilities Act (A.D.A.) 42 U.S.C. Section 12101 et. seq. with respect to Mortgaged Premises;

97540107

UNOFFICIAL COPY

IN WITNESS WHEREOF, Mortgagor has caused this Mortgage to be signed by their duly authorized officers and its corporate seal to be hereunto affixed on the day and year first above written.

AMALGAMATED BANK OF CHICAGO, as
Trustee under Trust Agreement dated August 25,
1988 and known as Trust No. 5389 and not personally.

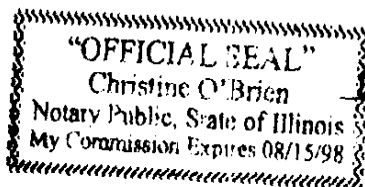
By: [Signature]
Title: SENIOR VICE PRESIDENT

ATTEST: [Signature]
By: [Signature]
Title: TRUST OFFICER

STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

I, CHRISTINE O'BRIEN, a Notary Public in and for and residing in said County, in the state aforesaid, DO HEREBY CERTIFY that LYING B. POLAKOW, Senior Vice President of AMALGAMATED BANK OF CHICAGO, as Trustee under Trust Agreement dated August 25, 1988 and known as Trust No. 5389, and JEAN M. DICUSOLA TRUST OFFICER, Secretary of said Corporation, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Sr. Vice President and TRUST OFFICER Secretary, respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said Corporation, for the uses and purposes therein set forth; and the said TRUST OFFICER Secretary did also then and there acknowledge that she, as custodian of the corporate seal of said Corporation, did affix the said corporate seal of said Corporation to said instrument as own 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 23rd day of July, 1997.



Christine O'Brien
Notary Public

97540107

UNOFFICIAL COPY

Property of Cook County Clerk's Office