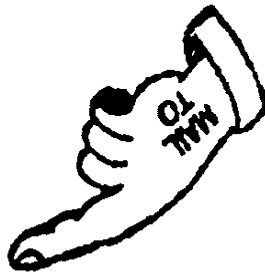


UNOFFICIAL COPY

97647872



THIS INSTRUMENT PREPARED BY
AND AFTER RECORDING RETURN TO:
Michael B. Manoel
Goldberg, Kohn, Bell, Black,
Rosenbloom & Montz, Ltd.
55 East Monroe Street
Suite 3700
Chicago, Illinois 60603
(312) 201-4000

DEPT-01 RECORDING \$139.50
T40013 TRAN 2281 09/03/97 15:26:00
48486 : TB *-97-647872
COOK COUNTY RECORDER

7641819 DI (10)

MORTGAGE, SECURITY AGREEMENT AND FIXTURE FILING

by

Amalgamated Bank of Chicago, f/w/a Amalgamated Trust
and Savings Bank, not personally but solely as
Trustee under a Trust Agreement dated May 1, 1970
and known as Trust Number 2167 ("Mortgagor")

for the benefit of

Allmerica Financial Life Insurance and Annuity Company ("Lender")

August 24, 1997

139.50

97647872

60

UNOFFICIAL COPY

TABLE OF CONTENTS

	<u>Page</u>
1. DEFINITIONS	1
1.1. Definitions.....	1
2. GRANT	1
2.1. Grant.....	1
3. REPRESENTATIONS AND WARRANTIES	2
3.1. Representations in Borrower's Certificate and Environmental Compliance and Indemnification Agreement are True and Correct.....	2
4. BORROWER'S COVENANTS	2
4.1. Payment and Performance.....	2
4.2. Compliance with Legal Requirements and Environmental Compliance and Indemnification Agreement.....	2
4.3. Payment of Impositions.....	2
4.4. Maintenance of First Lien Status of Mortgage.....	2
4.5. Maintenance of Property in Good Repair; Waste, Alterations and Additions.....	2
4.6. Mortgagor's Maintenance of Insurance; Waiver of Subrogation.....	3
4.7. Lender's Right to Inspect Mortgaged Property.....	5
4.8. Provision of Financial Statements and Rent Rolls; Inspection of Books and Records.....	5
4.9. Payment for Labor and Materials.....	6
4.10. Further Assurances; Corrections; Recording of Loan Documents; Payment of Stamp Taxes.....	6
4.11. Payment of Taxes on Mortgage.....	7
4.12. Estoppel Certificate.....	7
4.13. Lender's Expenses and Attorneys' Fees.....	7
4.14. Change of Address.....	8
4.15. Management of Mortgaged Property; Leasing Agents.....	8
4.16. Mortgagor to be Maintained as a Single-Purpose Entity.....	8
4.17. Improper Use of Mortgaged Property.....	9
4.18. Replacement of Fixtures and Personalty.....	9
4.19. Change in Zoning; Grant of Easements.....	10
4.20. Mortgagor's Defense of Lender.....	10
4.21. Transfers.....	10
4.22. Notice of Claims and Litigation.....	11
4.23. Real Estate Tax Service.....	11
4.24. Default Rate Applicable to Unpaid Amounts.....	11
5. RESERVE FOR IMPOSITIONS AND INSURANCE PREMIUMS	12
5.1. Reserve Fund for Impositions and Insurance Premiums.....	12

97647872

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

6. INSURANCE AND CONDEMNATION PROCEEDS	12
6.1. Notice of Damage or Destruction	12
6.2. Adjustment of Insurance Claims	12
6.3. Application of Insurance Proceeds	13
6.4. Conditions Applicable if Restoration Permitted	13
6.5. Condemnation Proceeds Payable to Lender	14
6.6. Application of Condemnation Proceeds	14
7. SECURITY AGREEMENT	14
7.1. Security Interest	14
7.2. Financing Statements	14
7.3. Fixture Filing	15
8. EVENTS OF DEFAULT	15
8.1. Payment Defaults	15
8.2. Covenant Defaults	15
8.3. False Representations, Warranties and Statements	15
8.4. Default Under Other Liens	15
8.5. Insolvency, Bankruptcy	16
8.6. Dissolution	16
8.7. Further Involuntary Encumbrances	16
8.8. Transfer of Mortgaged Property or Beneficial Interest in Mortgagor	16
8.9. Failure to Pay Impositions or Insurance Premiums	16
8.10. Guarantor's, Constituent Party's or Indemnitor's Default	16
9. REMEDIES	17
9.1. Lender's Remedies Upon Default	17
9.2. Possession After Foreclosure	22
9.3. Application of Foreclosure and Other Proceeds	22
9.4. Miscellaneous Matters Relating to Exercise of Remedies	22
10. MISCELLANEOUS	24
10.1. Mortgagor's Right to Contest Certain Matters	24
10.2. Exculpation	24
10.3. Payment After Acceleration	25
10.4. Notices	25
10.5. Covenants Running with the Land, Bind and Inure	25
10.6. Waiver, Severability	25
10.7. Counterparts	26
10.8. Applicable Law; Jurisdiction	26
10.9. Usury	26
10.10. Partial Payments	27
10.11. Change of Security	27
10.12. Headings for Convenience Only	27
10.13. Representation by Lender	27

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

10.14. Lender's Right to Assign and Participate Interests.....	27
10.15. Entire Agreement; Amendments in Writing.....	28
10.16. Waiver of Right to Trial by Jury.....	28
10.17. Rider.....	28
10.18. Refinance of Existing Loan.....	28
10.19. Mortgagor's Exculpatory.....	28

ATTACHMENT

Exhibit A - Legal Description

Exhibit B - Permitted Exceptions

Exhibit C - Definitions

Exhibit D - Form of Note

Property of Cook County Clerk's Office

97647872

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

MORTGAGE, SECURITY AGREEMENT AND FIXTURE FILING

This MORTGAGE, SECURITY AGREEMENT AND FIXTURE FILING (as the same may from time to time be modified or amended, this "Mortgage") is made as of August 29, 1997 by Amalgamated Bank of Chicago, f/k/a Amalgamated Trust and Savings Bank, not personally but solely as Trustee under a Trust Agreement dated May 1, 1970 and known as Trust Number 2167 having its principal office at One West Monroe Street, Chicago, Illinois 60603 (together with any and all subsequent owners of the Mortgaged Property, the "Mortgagor"), the mortgagor hereunder, to Allmerica Financial Life Insurance and Annuity Company, a Delaware corporation, having an address c/o Allmerica Asset Management, Inc. - Mortgages at 440 Lincoln Street, Worcester, Massachusetts 01653 (together with any and all subsequent holder or holders, from time to time, of the Note, the "Lender"), the mortgagee hereunder.

1. DEFINITIONS

1.1. Definitions.

All capitalized terms not otherwise defined in the body of this Mortgage shall have the meanings given to them in the Index of Definitions attached as Exhibit C and incorporated herein by reference.

2. GRANT

2.1. Grant.

To secure the full and timely payment of the Indebtedness and the full and timely performance and discharge of the Obligations, Mortgagor has GRANTED, BARGAINED, SOLD, MORTGAGED, CONFIRMED and CONVEYED, and does hereby GRANT, BARGAIN, SELL, MORTGAGE, CONFIRM and CONVEY, unto Lender, with MORTGAGE COVENANTS, the real property or interest therein described in Exhibit A and the improvements thereon, and all of the other Mortgaged Property (as defined in Exhibit C), subject, however, to the Permitted Exceptions described in Exhibit B, upon the terms and conditions of this Mortgage, with Power of Sale and right of entry as provided below, TO HAVE AND TO HOLD the Mortgaged Property unto Lender, forever, and Mortgagor does hereby bind itself, its successors and assigns to FOREVER DEFEND the title to the Mortgaged Property unto Lender against every person whomever claiming the same, provided, however, that, if Mortgagor shall pay (or cause to be paid) the Indebtedness as and when the same shall become due and payable and shall fully perform and discharge (or cause to be fully performed and discharged) the Obligations on or before the date the same are to be performed and discharged, then the liens, security interests, estates, and rights granted by this Mortgage and the other Loan Documents shall terminate, in accordance with the provisions hereof, otherwise they shall remain in full force and effect.

97647872

UNOFFICIAL COPY

3. REPRESENTATIONS AND WARRANTIES

3.1. Representations in Borrower's Certificate and Environmental Compliance and Indemnification Agreement are True and Correct.

Mortgagor represents, agrees and confirms that, as of the date hereof, the representations and warranties set forth in the Borrower's Certificate, in the Environmental Compliance and Indemnification Agreement and in all the other Loan Documents are true, accurate and complete in all material respects. To the best of Mortgagor's knowledge, there are no facts or circumstances existing or likely to exist which would make any of such representations or warranties untrue, incomplete or misleading in any material respect.

4. BORROWER'S COVENANTS

Mortgagor covenants and agrees with Lender as follows:

4.1. Payment and Performance.

Mortgagor will pay the indebtedness and perform and discharge the Obligations on or before the time for performance specified in the Loan Documents.

4.2. Compliance with Legal Requirements and Environmental Compliance and Indemnification Agreement.

Subject to Section 10.1 (Mortgagor's Right to Contest Certain Matters) Mortgagor will promptly and faithfully comply with, conform to, and obey all Legal Requirements applicable to it or the Mortgaged Property.

4.3. Payment of Impositions.

Subject to Section 5.1 (Reserve Fund for Impositions and Insurance Premiums) and Section 10.1 (Mortgagor's Right to Contest Certain Matters), Mortgagor will pay and discharge the Impositions not later than five (5) days prior to the due date thereof, and Mortgagor shall deliver to Lender a written receipt evidencing the payment of each Imposition no later than five (5) days prior to the due date thereof.

4.4. Maintenance of First Lien Status of Mortgage.

Mortgagor will protect the first lien and security interest status of this Mortgage and the other Loan Documents.

4.5. Maintenance of Property in Good Repair, Waste, Alterations and Additions.

Mortgagor will keep the Mortgaged Property in first-class order and condition and will make all repairs, replacements, renewals, additions, betterments, improvements, and alterations thereof and thereto, interior and exterior, structural and nonstructural, ordinary and

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

extraordinary, foreseen and unforeseen, which are necessary or reasonably appropriate to keep the same in such order and condition. Mortgagor will prevent any act, occurrence, or neglect which might impair the value or usefulness of the Mortgaged Property for its intended usage, as herein contemplated. Mortgagor will not commit, permit or suffer any waste of the Mortgaged Property. Mortgagor will not, without Lender's prior written consent, which shall not be unreasonably withheld, make or permit to be made any alterations or additions to the Mortgaged Property (a) having a cost in excess of \$25,000, or, in the case of any repair required pursuant to the terms of that certain Lease Agreement with Burnham Service Company, Inc. dated _____, 1997 (the "Lease"), having a cost in excess of \$100,000, (b) involving material modification to the roof, systems or structural elements of the Improvements, or (c) involving the demolition of any material portion of the Improvements, except to the extent required to comply with (i) Section 4.2 (Compliance with Legal Requirements) or this Section 4.5 (in either of which events Mortgagor will notify Lender in writing promptly upon the commencement of the work and the completion thereof), or (ii) Permitted Leases. All alterations or additions shall be completed in a good and workmanlike manner and in compliance with all Legal Requirements and other obligations by which Mortgagor or the Mortgaged Property is bound. No alterations or additions shall be made which adversely affect the value or utility of the Mortgaged Property.

4.6. Mortgagor's Maintenance of Insurance; Waiver of Subrogation

Mortgagor will obtain and maintain the following insurance upon and relating to the Mortgaged Property:

(a) owner's (and, during any period of construction by a third party, contractors') policy of comprehensive general public liability insurance (including automobile coverage) on an occurrence basis, with a combined single limit of not less than \$3,000,000.00 or such higher amount as Lender may reasonably require;

(b) all-risk insurance in an amount not less than the full replacement cost of all Improvements, including the cost of debris removal, with annual agreed-amount endorsement and sufficient at all times to prevent Mortgagor from becoming a coinsurer, with no deduction for depreciation and having a deductible amount no greater than \$10,000.00;

(c) all-risk insurance in an amount not less than the full replacement cost of the Personalty, with annual agreed-amount endorsement and sufficient at all times to prevent Mortgagor from becoming a coinsurer, with no deduction for depreciation and having a deductible amount no greater than \$10,000.00;

(d) business interruption or rental loss insurance in an amount not less than the greater of (A) twelve (12) months of pro forma rents or (B) the aggregate of the annual Scheduled Monthly Payments under the Note, the annual debt service on any subordinate mortgage or other financing permitted by Lender, the annual ground rents (if all or any portion of the Mortgaged

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Property is subject to a ground lease permitted by Lender), and the normal annual amount of operating expenses of the Mortgaged Property (including, without limitation, Impositions), based on the last full calendar year of operations for the Mortgaged Property;

(e) if the Mortgaged Property is now or hereafter becomes situated in a "flood hazard area," a flood insurance policy, in such amount as is required by Lender;

(f) worker's compensation insurance for Beneficiary and any general contractor or agent performing any construction work or other services on or with respect to the Mortgaged Property, in such amount as is required by Lender;

(g) if any alcoholic beverages are sold, distributed, furnished or served at or from the Mortgaged Property, insurance for "dram shop" liability or otherwise relating to the sale, distribution, furnishing or service of alcoholic beverages;

(h) broad form boiler and machinery insurance (without exclusion for explosion) covering all boilers or other pressure vessels, machinery and equipment located in, on or about the Mortgaged Property and insurance against loss of occupancy or use arising from any breakdown thereof in such amounts as Lender requires;

(i) earthquake insurance, if Lender requests such coverage, in such amount as is required by Lender; and

(j) such other insurance, if any, as Lender may require from time to time.

Each insurance policy obtained by Mortgagor shall provide by way of endorsements, riders or otherwise that (a) with respect to liability insurance and environmental remediation insurance, Lender shall be named as an additional insured; with respect to the other insurance required hereunder (other than worker's compensation insurance), Lender shall be named under a standard noncontributory mortgagee clause providing, among other things, for such amounts to be payable to Lender as a mortgagee and loss payee and not as a coinsured, (b) the coverage of Lender shall not be terminated, reduced, or modified in any manner regardless of any breach or violation by Mortgagor of any warranties, declarations, conditions or terms in such policy, (c) no such insurance policy shall be canceled, endorsed, altered, or reissued to effect a change in coverage for any reason and to any extent unless such insurer shall have first given Lender thirty (30) days' prior written notice thereof, and (d) Lender may, but shall not be obligated to, make premium payments to prevent any cancellation, endorsement, alteration, or reissuance, and such payments shall be accepted by the insurer to prevent the same, however, Lender shall not be liable for the failure to make such payment or obtain such insurance, or for the amount, coverage or type of insurance

97647872

UNOFFICIAL COPY

obtained, the form or legal sufficiency of any such insurance contract, or the solvency of any such insurance company.

Mortgagor shall furnish to Lender a duplicate original of each initial policy simultaneously with the execution of this Mortgage and the original of each renewal policy not less than thirty (30) days' prior to the expiration of the initial policy or each immediately preceding renewal policy, together with receipts or other evidence that the premiums thereon have been paid for an additional one (1) year period. Mortgagor shall furnish to Lender, on or before thirty (30) days after the close of each calendar year, a statement certified by a duly authorized officer of Mortgagor of the amounts of insurance maintained in compliance herewith, of the risks covered by such insurance and of the insurance company or companies which carry such insurance. All insurance policies required under this Mortgage shall be with a company or companies (i) authorized to do business in the state in which the Mortgaged Property is located, (ii) with an overall rating of A or higher, according to the standards set by A.M. Best Company (or a similar rating by an equivalent rating company satisfactory to Lender), and (iii) in which any single risk insured against pursuant to this Mortgage does not exceed 5% of the insurer's policyholders' surplus.

Mortgagor waives any and all right to claim, recover, or obtain subrogation against Lender or its officers, directors, employees, agents, attorneys, or representatives for loss or damage to Mortgagor, the Mortgaged Property, Mortgagor's property or the property of others under Mortgagor's control from any cause insured against or required to be insured against by the provisions of the Loan Documents.

4.7. Lender's Right to Inspect Mortgagor's Property.

Mortgagor will permit Lender, and its agents, upon reasonable advance notice to Mortgagor from time to time and subject to Mortgagor's reasonable security requirements, to inspect the Mortgaged Property (including the interior of any Improvements), take photographs thereof, and conduct tests and take samples therefrom in connection with its evaluation of the condition of the Mortgaged Property, its compliance with the provisions hereof and the status of the Mortgaged Property under applicable Environmental Laws.

4.8. Provision of Financial Statements and Rent Rolls; Inspection of Books and Records.

Mortgagor will maintain full and accurate books of account and other records reflecting the results of the operations of the Mortgaged Property and will furnish to Lender:

- (a) on or before ninety (90) days after the end of each calendar year a financial statement for the Mortgagor, Beneficiary and the Mortgaged Property, prepared in accordance with generally accepted accounting principles, consistently applied, on both a cash and accrual basis, including income and expense and cash flow statements, and a balance sheet, certified by the Chief Financial Officer of Beneficiary as being true and correct and audited and certified by an independent certified public accountant, including an

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

income statement and balance sheet for the Mortgaged Property in such reasonable detail as Lender may request, and setting forth the financial condition and the income and expenses for the Mortgaged Property for the immediately preceding calendar year;

(b) within ninety (90) days after the end of each calendar year, a rent roll in the same format as the rent roll attached to the Borrower's Certificate, certified by the Chief Financial Officer of Mortgagor as being true and correct;

(c) upon the reasonable request of Lender, such other income statements, balance sheets, cash flow statements, copies of vendor's contracts and other financial and credit information as Lender may reasonably request with respect to the Mortgaged Property, Mortgagor, Beneficiary, each Guarantor and each Indemnitor, certified by the Chief Financial Officer of Mortgagor, each Guarantor and each Indemnitor, respectively, as being true and correct and accurately presenting the subject matter thereof.

Mortgagor shall permit Lender and its agents, upon notice, to audit, examine, make and take away copies or extracts of Mortgagor's books of account and records relating to the Mortgaged Property, all of which shall be maintained and made available to Lender and/or Lender's agents for such purpose at the address specified herein for Mortgagor or at such other location as Lender may approve, such approval not to be unreasonably withheld. Mortgagor will cooperate with Lender in any such audit or examination. Without derogating from the foregoing, in the event Mortgagor fails to deliver any statement, rent roll or information required to be delivered hereunder, Lender or its agents may exercise its rights under this paragraph in order to prepare such a statement or rent roll or obtain such information, and Mortgagor shall pay all reasonable costs and expenses associated therewith.

Upon foreclosure or acceptance of a deed in lieu thereof, Mortgagor will turn over any or all such books and records to Lender as Lender may request.

4.9. Payment for Labor and Materials.

Subject to Section 10.1 (Mortgagor's Right to Contest Certain Matters) Mortgagor will promptly pay when due all bills and costs for labor and materials, utilities, services or other obligations incurred by or on behalf of Mortgagor in connection with the Mortgaged Property.

4.10. Further Assurances, Corrections, Recording of Loan Documents, Payment of Stamp Taxes.

From time to time, at the request of Lender, Mortgagor will (i) promptly correct any defect, error, or omission which may be discovered in the contents of any Loan Document or in the execution or acknowledgment thereof; (ii) execute and deliver such further instruments and perform such further acts and provide such further assurances, all as may be reasonably necessary, desirable, or proper, in Lender's opinion, to carry out more effectively the purposes of this

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Mortgage and the Loan Documents and to confirm the liens and security interests of this Mortgage and the Loan Documents on any property intended by the terms hereof or thereof to be covered hereby or thereby, including without limitation, any renewals, additions, substitutions, replacements, or appurtenances to the Mortgaged Property; (iii) execute, acknowledge, deliver, procure, file, and/or record the Loan Documents (as requested by Lender) and, if necessary, desirable or proper, replacements thereof, and any other document or instrument deemed advisable by Lender to protect the liens and security interests herein granted against the rights or interests of third persons; and (iv) pay all documentary stamp taxes, fees and other costs connected with any of the foregoing.

4.11. Payment of Taxes on Mortgage.

If at any time any law shall be enacted imposing or authorizing the imposition of any tax upon this Mortgage, or upon any rights, titles, liens, or security interests created hereby, or upon the Indebtedness or any part thereof, Mortgagor will pay all such taxes and shall deposit in the reserve fund established pursuant to Section 5.1 (Reserve Fund for Impositions and Insurance Premiums) in such amount as Lender shall thereafter require in order to assure payment of such tax from time to time; provided, however, that if such law makes it unlawful for Mortgagor to pay such tax, then (i) Mortgagor shall not pay nor be obligated to pay such tax, and (ii) Lender shall have the option to accelerate the Indebtedness in full by giving at least one hundred twenty (120) days notice to Mortgagor, and no Make Whole Amount shall be payable thereon.

4.12. Estoppel Certificate.

Upon ten (10) days written request of Lender or Lender's representative, Mortgagor will furnish to Lender a written certificate, in form satisfactory to Lender, confirming the unpaid balance of the Indebtedness and that there are no offsets or defenses against full payment of the Indebtedness and the terms hereof, or, if there are any such claimed offsets or defenses, specifying them, and certifying that there does not exist an event or circumstance which constitutes, or which upon due notice or lapse of time or both would constitute an Event of Default; or, if such an event or circumstance exists, specifying the nature thereof.

4.13. Lender's Expenses and Attorneys' Fees.

Mortgagor will pay on demand all out-of-pocket costs and expenses including, but not limited to, reasonable attorneys' fees and expenses, paid or incurred by Lender in connection with the closing of the Loan, any proposed extension, modification or amendment to any of the Loan Documents, the review of any matter for which Lender's consent, approval or waiver is required or requested thereunder, the making of any advance under the Note, and any suit to which Lender is a party involving or on account of this Mortgage or the Mortgaged Property and those reasonable attorneys' fees and expenses incurred or incident to the enforcement or collection of the Indebtedness or the Obligations or the exercise of any right or remedy under any Loan Document.

97647872

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

4.14. Change of Address.

Mortgagor shall give written notice to Lender of any change of address of Mortgagor, any Constituent Party, Guarantor and Indemnitor at least ten (10) days prior to the effective date of such change of address.

4.15. Management of Mortgaged Property; Leasing Agents.

The manager of the Mortgaged Property shall have demonstrated management experience and shall be subject to the approval of Lender. Any exclusive leasing agent for the Mortgaged Property, if other than Mortgagor or such property manager approved by Lender, shall have demonstrated leasing experience and shall be subject to the approval of Lender. Lender hereby approves as of the date hereof the manager and exclusive leasing agent listed in the Borrower's Certificate. Lender may at any time rescind its prior approval of any manager or leasing agent if Lender is no longer satisfied with such manager or leasing agent, in which event Mortgagor shall, subject to Lender's approval, engage a substitute manager or leasing agent. All agreements to pay leasing commissions for leases and all management agreements shall provide that the obligation to pay commissions and management fees shall (i) be subject and subordinate to the Mortgage, and (ii) not be enforceable against Lender.

4.16. Mortgagor to be Maintained as a Single-Purpose Entity.

(a) Mortgagor will, and will cause each Constituent Party to, preserve and keep in full force and effect its existence, rights, franchises, and trade names, all of which shall be maintained separate and apart from its Affiliates;

(b) Mortgagor represents that it does not own, and agrees that it will not own, any asset or property other than the Mortgaged Property and that Beneficiary does not own, nor will it own, any asset or property other than its direct or indirect interest in the Mortgaged Property,

(c) Mortgagor will not engage in, and will prevent Beneficiary from engaging in, any business other than the ownership, management and operation of the Mortgaged Property;

(d) Mortgagor will not enter into, and will prevent Beneficiary from entering into, any contract or agreement with any Constituent Party, Indemnitor or Guarantor, or any Affiliate of any of them, except upon terms and conditions that are substantially similar to those that would be available on an arms-length basis with third parties;

(e) Mortgagor has not incurred and will not incur, and will prevent Beneficiary from incurring, any indebtedness (including guaranteeing any obligation), other than (i) the Indebtedness, and (ii) trade and operational debt incurred in the ordinary course of business with such trade creditors and in such

97647872

UNOFFICIAL COPY

amounts as are normal and reasonable under the circumstances. Mortgagor does not, will not hold itself out to be, and will prevent Beneficiary from holding itself out to be, responsible for the debts or obligations of any other person or entity;

(f) Mortgagor has not made, will not make, and will prevent Beneficiary from making, any loans or advances to any third party (including any Constituent Party, Indemnitor or Guarantor or any Affiliate of any of them);

(g) Beneficiary is and will remain solvent and Mortgagor and Beneficiary will pay their debts from their assets as the same shall become due.

Beneficiary will maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations;

(h) Beneficiary will be, and at all times will hold itself out as, a legal entity separate and distinct from any other entity. Beneficiary has done or caused to be done and will do all things necessary to preserve its existence, and Mortgagor shall not permit any Constituent Party, Indemnitor or Guarantor to, amend or modify its partnership certificate, partnership agreement, articles of incorporation and bylaws, or trust or other organizational documents in a manner which would adversely affect the Mortgagor's and Beneficiary's existence as single-purpose entities;

(i) Mortgagor will cause Beneficiary to maintain books and records and bank accounts separate from those of any Affiliates or of any Constituent Party and Mortgagor will file its own tax returns; and

(j) Mortgagor will not commingle any of the funds or other assets of Mortgagor with those of any Constituent Party, Guarantor, Indemnitor or Affiliate of any of them, or those of any other person.

4.17. Improper Use of Mortgaged Property.

Mortgagor will not use or allow the use, maintenance, operation, or occupancy of the Mortgaged Property in any manner which (i) violates any Legal Requirement, (ii) constitutes a public or private nuisance or (iii) makes void, voidable, or cancelable any insurance or violates any Lease then in force with respect thereto. Mortgagor will not allow the uses of the Mortgaged Property to change from the uses occurring as of the date of this Mortgage, as described in the Borrower's Certificate.

4.18. Replacement of Fixtures and Personalty.

Mortgagor will not, without the prior written consent of Lender, remove or negligently permit to be removed any material Fixture or Personalty from the Land or Improvements unless the item is removed temporarily for maintenance and repair or, if removed

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

permanently, is replaced by an article of equal utility and value, and is owned by Mortgagor, free and clear of any lien or security interest.

4.19. Change in Zoning; Grant of Easements.

Mortgagor will not seek or acquiesce in a zoning reclassification of all or any portion of the Mortgaged Property or grant or consent to any easement, dedication, plat, or restriction affecting the Mortgaged Property, without Lender's prior written consent.

4.20. Mortgagor's Defense of Lender.

At its own cost and expense, Mortgagor will defend with counsel approved by Lender, and will hold Lender harmless from, any action, proceeding, or claim affecting or relating in any way to the Mortgaged Property or the Loan Documents, including, without limitation, any such action, proceeding, or claim arising from injury, death or property damage on or to the Mortgaged Property, and all costs and expenses incurred by Lender in such an event (including all court costs and fees of attorneys and experts) shall be borne by Mortgagor. If at any time Mortgagor defaults under or otherwise fails to perform under any of the Obligations, Lender may, but shall not be obligated to perform or attempt to perform any such Obligations. Any payment made or expense incurred in the performance or attempted performance of any of the Obligations shall be and become a part of the Indebtedness, and Mortgagor shall pay to Lender all sums so advanced or paid by Lender, with interest from the date when paid or incurred by Lender at the Default Rate. No such payment or performance by Lender shall constitute a waiver of such default. Lender shall be subrogated to all rights, titles, liens, and security interests securing the payment of any debt, claim, tax, or assessment for the payment of which Lender may make an advance or which Lender may pay.

4.21. Transfers.

Without Lender's prior written consent, which Lender may withhold in its sole and absolute discretion, neither Mortgagor nor any Constituent Party shall make or allow a Transfer, or enter into any agreement to make or allow, a Transfer other than one which is expressly conditioned upon obtaining Lender's consent thereto. Without derogating from the foregoing, Mortgagor agrees that Lender may condition its decision to grant or withhold consent to a Transfer on such terms and conditions as Lender may require in its sole and absolute discretion, including without limitation (i) no default existing hereunder or under any of the Loan Documents; (ii) consideration in Lender's sole and absolute discretion of the creditworthiness, management ability and experience, reputation and integrity of the party to whom such Transfer is proposed to be made and its principals and Affiliates; (iii) consideration in Lender's sole and absolute discretion of whether the security or credit for repayment of the Indebtedness and the performance and discharge of the Obligations will be impaired by the proposed Transfer; (iv) an increase in the rate of interest payable under the Note or any other change in the terms and provisions of the Loan Documents, including the provision of additional security; (v) payment to Lender of a transfer fee of not less than 1% of the outstanding principal balance under the Note; (vi) payment of Lender's attorneys' fees, title premiums, and other costs and expenses in connection with the proposed

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Transfer, (vii) the assumption of payment of the Indebtedness and performance and discharge of the Obligations by the party to whom such Transfer will be made (without the release of Mortgagor), (viii) the execution of documentation satisfactory in form and substance to Lender, (ix) endorsements to any existing mortgagee title insurance policies insuring Lender's interests in the Mortgaged Property, and (x) if at any time a rating has been assigned to this Mortgage or to securities backed by this Mortgage, satisfaction of such conditions and requirements of any Rating Agency.

4.22. Notice of Claims and Litigation.

Mortgagor shall promptly (and in any event within fifteen (15) days after Mortgagor's own receipt of notice) notify Lender in writing of any pending or threatened suits or proceedings at law or in equity or before or by any Governmental Authority which (i) if adversely determined, would materially affect the financial condition of Mortgagor, any Guarantor or Indemnitor, or the Mortgaged Property or (ii) involve the validity or enforceability of the Loan Documents or the priority of the lien of the Mortgage against the Mortgaged Property. Mortgagor shall also notify Lender in writing as soon as it has knowledge of any default with respect to any order, writ, injunction, decree or demand of any Governmental Authority affecting Mortgagor or the Mortgaged Property, where such default could materially affect or impair Mortgagor's financial condition or the Mortgage Property. Mortgagor covenants that it shall promptly (and in any event within fifteen (15) days after delivery or receipt of communications regarding the same) notify Lender in writing of any actual litigation affecting Mortgagor or the Mortgaged Property involving claims in excess of \$25,000, any litigation threatened in a writing received by Mortgagor involving claims in excess of \$25,000, and the existence of any mechanics' liens.

4.23. Real Estate Tax Service.

Lender may, at Mortgagor's expense, contract with third parties who will provide, from time to time, information regarding the status of the payment of real estate taxes applicable to the Mortgaged Property.

4.24. Default Rate Applicable to Unpaid Amounts.

All sums paid or incurred by Lender in connection with the exercise of any rights, remedies or privileges created by or reserved to Lender under this Mortgage, or in connection with the enforcement of any of the provisions hereof or Lender's rights hereunder (including, without limitation, Lender's attorneys' fees and expenses) shall be immediately due and payable by Mortgagor to Lender, and until paid shall be added to and become a part of the Indebtedness, with interest thereon at the Default Rate from the date of payment by Lender until paid, and the same may be collected as part of the Indebtedness in any suit hereon.

97647872

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

5. RESERVE FOR IMPOSITIONS AND INSURANCE PREMIUMS

5.1. Reserve Fund for Impositions and Insurance Premiums

Mortgagor shall create a reserve fund for the payment of all Impositions and Insurance Premiums by paying to Lender, on the first day of each calendar month, a sum sufficient, as estimated by Lender in its sole and absolute discretion, to pay, at least 30 days before the same become due, all Impositions that will next become due on the Mortgaged Property and all Insurance Premiums that will next become due and payable. All such sums shall be held by Lender without interest to Mortgagor, unless interest is required by applicable law, for the purposes, so long as no Event of Default exists hereunder, of paying such Impositions and Insurance Premiums. Any excess reserve shall be credited by Lender against subsequent reserve payments required hereunder, and any deficiency shall be paid by Mortgagor to Lender upon demand, but in no event later than five (5) days before the date when such Impositions and insurance Premiums shall become delinquent. In the event there exists a deficiency in such fund or reserve at any time when Impositions or Insurance Premiums are due and payable, Lender may, but shall not be obligated to, advance the amount of such deficiency on behalf of Mortgagor and such amounts so advanced shall become a part of the Indebtedness, shall be immediately due and payable, and shall bear interest at the Default Rate from the date of such advance through and including the date of repayment. Transfer of legal title to the Mortgaged Property shall automatically transfer to the holder of legal title to the Mortgaged Property the interest of Mortgagor in all sums deposited with Lender under the provisions of this Section 5.1.

6. INSURANCE AND CONDEMNATION PROCEEDS

6.1. Notice of Damage or Destruction

Mortgagor will give Lender prompt notice of any damage to or destruction of the Mortgaged Property.

6.2. Adjustment of Insurance Claims

In case of loss covered by policies of insurance, Lender (or, after foreclosure, the purchaser at the foreclosure sale) is hereby authorized, at Lender's (or such purchaser's) option, either (i) to settle and adjust any claim under such policies without the consent of Mortgagor, or (ii) to allow Mortgagor to agree with the insurance company or companies on the amount to be paid upon the loss; provided that, in either case, Mortgagor may adjust losses aggregating not in excess of \$100,000.00 if such adjustment is carried out in a competent and timely manner, and provided that, in either case, Lender shall and is hereby irrevocably authorized by Mortgagor to collect any such insurance proceeds; and the expenses incurred by Lender in the adjustment and collection of insurance proceeds shall be part of the Indebtedness and shall be reimbursed to Lender upon demand and shall bear interest at the Default Rate

97647872

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

6.3. Application of Insurance Proceeds.

The proceeds of insurance resulting from any insured casualty shall, at the sole and absolute option of Lender, either (i) be applied to the payment of the Indebtedness in accordance with the provisions of Section 9.3 (Application of Foreclosure and Other Proceeds), or (ii) be applied to reimburse Mortgagor for the cost of restoring, repairing, replacing or rebuilding the Mortgaged Property, as provided for in Section 6.4 (Conditions Applicable if Restoration Permitted), or (iii) be applied in part pursuant to clause (i) above and in part pursuant to clause (ii) above. Any such application to the Indebtedness shall not reduce or postpone any payments otherwise required pursuant to the Note.

6.4. Conditions Applicable if Restoration Permitted.

In the event that proceeds of insurance shall be made available to Mortgagor for the restoring, repairing, replacing or rebuilding ("Restoration") of the Mortgaged Property, Mortgagor shall restore the same to be of at least equal value and of substantially the same character as prior to such damage or destruction, all to be effected in accordance with applicable Legal Requirements and plans and specifications approved in advance by Lender.

Further, such proceeds shall be disbursed from time to time, but no more often than once per calendar month in increments of at least \$25,000 (except for the final advance), upon Lender being furnished with (i) evidence satisfactory to it of the estimated cost of completion of the Restoration, (ii) funds, (or, at Lender's option, evidence satisfactory to Lender of the availability of such funds), which shall be sufficient in addition to the proceeds of insurance to complete the proposed Restoration, and (iii) such architect's certificates, waivers of lien, contractor's sworn statements, title insurance endorsements, bonds, plats of survey and such other evidence of cost, payment and performance as Lender may require and approve including, without limitation, inspection reports from its representatives who may be retained by Lender, at Mortgagor's expense, for the purpose of verifying the process of the Restoration. No payment made prior to the final completion of the Restoration shall exceed ninety percent (90%) of the value of the work performed from time to time; funds other than proceeds of insurance shall be used to pay costs prior to disbursement of such proceeds; and at all times, the undisbursed balance of such proceeds remaining in the hands of Lender, together with funds deposited for that purpose or irrevocably committed to the satisfaction of Lender by or on behalf of Mortgagor for that purpose, shall be at least sufficient in the judgment of Lender to pay for the cost of completing the Restoration free and clear of all liens. Any surplus which may remain out of insurance proceeds held by Lender after payment of such costs of Restoration, shall be applied first to reimburse Mortgagor for any of its own funds used to pay for Restoration, with the balance, if any, to be applied to the payment of the Indebtedness in accordance with the provisions of Section 9.3 (Application of Foreclosure and other Proceeds). Any such application to the Indebtedness shall not reduce or postpone any payment otherwise required pursuant to the Note.

97647872

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

6.5. Condemnation Proceeds Payable to Lender

Lender shall be entitled to receive any and all sums which may be awarded and become payable to Mortgagor for condemnation of the Mortgaged Property for public or quasi-public use, or by virtue of private sale in lieu thereof, and any sums which may be awarded or become payable to Mortgagor for damages caused by public works or construction on or near the Mortgaged Property. All such sums are hereby assigned to Lender, and Mortgagor shall, upon request of Lender, make, execute, acknowledge, and deliver any and all additional assignments and documents as may be necessary, proper or desirable from time to time to enable Lender to collect any such sums. Lender shall not be, under any circumstances, liable or responsible for failure to collect, or exercise diligence in the collection of, any such sums.

6.6. Application of Condemnation Proceeds

Any sums received by Lender as a result of condemnation shall be applied to the Indebtedness in accordance with the provisions of Section 9.3. (Application of Foreclosure and Other Proceeds). Any such application to the Indebtedness shall not reduce or postpone any payments otherwise required pursuant to the Note.

7. SECURITY AGREEMENT

7.1. Security Interest

This Mortgage is a security agreement on personal property within the meaning of the Code, and shall constitute a first and prior security interest under the Code with respect to the Personality, Fixtures, Contracts, Permits, Leases and Rents. To this end, Beneficiary and Mortgagor have GRANTED, BARGAINED, CONVEYED, ASSIGNED, TRANSFERRED, and SET OVER, and do hereby GRANT, BARGAIN, CONVEY, ASSIGN, TRANSFER and SET OVER, unto Lender, a first and prior security interest in all of Beneficiary's and Mortgagor's right, title and interest, in, to, under and with respect to the Personality, Fixtures, Contracts, Permits, Leases, and Rents to secure the payment of the Indebtedness and performance and discharge of the Obligations.

7.2. Financing Statements

Beneficiary and Mortgagor hereby agree with Lender to execute and deliver to Lender, in form and substance satisfactory to Lender, such financing statements and such further assurances as Lender may, from time to time, consider advisable to create, perfect, and preserve Lender's security interest granted herein. Lender may cause such statements and assurances to be recorded and filed, at Mortgagor's expense, at such times and places as may be required or permitted by law to so create, perfect, and preserve such security interest, and Beneficiary and Mortgagor hereby grant to Lender an irrevocable power of attorney (coupled with an interest) to execute in Beneficiary's or Mortgagor's name and stead any such statements and assurances.

97647872

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

7.3. Fixture Filing.

This Mortgage shall constitute a "fixture filing" for the purposes of the Code. Information concerning the security interest granted herein may be obtained from the parties at the address of the parties set forth herein. For purposes of the security interest granted herein, the address of debtor (Beneficiary) and the address of the secured party (Lender) are set forth in the first paragraph of this Mortgage.

8. EVENTS OF DEFAULT

The term "Event of Default," as used herein and in the Loan Documents, shall mean the occurrence or happening, at any time and from time to time, of any one or more of the following:

8.1. Payment Defaults

Failure of the Mortgagor to pay any amount due under the Note, this Mortgage or any of the other Loan Documents, in full when due, or failure of the Mortgagor to pay the full amount due under the Note upon Stated Maturity, acceleration or when the Indebtedness shall otherwise become due and payable.

8.2. Covenant Defaults

Except as to defaults otherwise provided for in this Article VIII, default by Mortgagor in the due observance or performance of any of the covenants or agreements contained in this Mortgage or in any of the other Loan Documents, and the continuation of such default for more than 30 days after notice thereof from Lender, provided that, if such default cannot be cured with the exercise of diligent efforts within such 30 days, such 30 day period shall be extended for such period of time, not exceeding an additional 45 days, as shall be required for Mortgagor, in the exercise of diligent efforts, to cure the default.

8.3. False Representations, Warranties and Statements

If any representation, warranty, or statement made in, under, or pursuant to this Mortgage, the Borrower's Certificate, the Environmental Compliance and Indemnification Agreement, any other Loan Document or any affidavit, certificate or other instrument executed or delivered at any time in connection with the Loan or the Indebtedness is false or misleading in any material respect as of the date thereof.

8.4. Default Under Other Liens

If Mortgagor shall default or commit an event of default under or pursuant to any other mortgage or security agreement which covers or affects any part of the Mortgaged Property (without implying Lender's consent thereto).

UNOFFICIAL COPY

8.5. Insolvency, Bankruptcy.

If (i) Mortgagor or Beneficiary executes an assignment for the benefit of creditors or admits in writing its inability to pay its debts generally as they come due, (ii) Mortgagor or Beneficiary fails to pay its debts generally as they come due, (iii) any levy against the Mortgaged Property of any execution, attachment, sequestration or other writ is not vacated within sixty days after the levy, (iv) the appointment of a receiver, trustee or custodian of Mortgagor, Beneficiary or of the Mortgaged Property is not discharged within sixty days after the appointment, (v) Mortgagor or Beneficiary files as a debtor a petition, case, proceeding or other action pursuant to, or voluntarily seeks the benefit of, any Debtor Relief Law, (vi) Mortgagor or Beneficiary files a petition, complaint, answer or other instrument which seeks to effect a suspension of, or which has the effect of suspending any of, the rights or powers of Lender granted in any Loan Document; or (vii) there is filed any petition, case, proceeding or other action against Mortgagor or Beneficiary as a debtor under any Debtor Relief Law or seeking an appointment of a receiver, trustee, custodian or liquidator of Mortgagor, Beneficiary or of the Mortgaged Property, or of any significant portion of Mortgagor's or Beneficiary's other property, and Mortgagor or Beneficiary admits or fails to contest diligently the material allegations thereof or the petition, case, proceeding or other action is not permanently dismissed or discharged within 60 days following the date of filing.

8.6. Dissolution.

If Mortgagor or Beneficiary shall dissolve, terminate or liquidate, or merge with or be consolidated into any other entity.

8.7. Further Involuntary Encumbrances.

If any lien or encumbrance is involuntarily placed on the Mortgaged Property and is not discharged within 30 days after the date it attaches to the Mortgaged Property, subject to Mortgagor's right to contest as provided in Section 10.1 hereof.

8.8. Transfer of Mortgaged Property or Beneficial Interest in Mortgagor.

If a Transfer occurs without the prior written consent of Lender, other than an involuntary lien or encumbrance which shall be governed by Section 8.7 (Further Involuntary Encumbrances).

8.9. Failure to Pay Impositions or Insurance Premiums.

If Mortgagor fails to pay any and all Impositions or Insurance Premiums by the times they are required to be paid hereunder.

8.10. Guarantor's, Constituent Party's or Indemnitor's Default.

The occurrence of any event referred to in Sections 8.5 (Insolvency, Bankruptcy) and 8.6 (Dissolution) hereof with respect to any Guarantor, Constituent Party, Indemnitor or any other person or entity obligated in any manner to pay or perform any of the Indebtedness or

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Obligations, respectively, (as if such Guarantor, Constituent Party, Indemnitor or other person or entity were the "Mortgagor" in such Sections), or default by any Guarantor or Indemnitor, beyond the applicable grace period, in the performance of any covenant or agreement of such Guarantor or Indemnitor contained in any of the Loan Documents.

9. REMEDIES

9.1. Lender's Remedies Upon Default.

Upon the occurrence of an Event of Default, Lender may, at Lender's option, by itself or otherwise, do any one or more of the following.

(a) Right to Perform Mortgagor's Covenants. Lender may, but shall not be obligated to, perform or attempt to perform any of Mortgagor's covenants or cure or attempt to cure any default under any of the Loan Documents. Any payment made or expense incurred in the performance or attempted performance of any such covenant or agreement shall be and become a part of the Indebtedness and Mortgagor shall pay to Lender all sums so advanced or paid by Lender, with interest from the date when paid or incurred by Lender at the Default Rate. No such payment or performance by Lender shall constitute a waiver of any Event of Default. Lender shall be subrogated to all rights, titles, liens, and security interests securing the payment of any debt, claim, tax, or assessment for which Lender may make an advance or may pay.

(b) Right of Entry. Lender may enter upon the Mortgaged Property, and take exclusive possession of the Mortgaged Property and of all books, records, and accounts relating thereto, and exercise without interference from Mortgagor, any Constituent Party or Affiliate, any and all rights which Mortgagor has with respect to the Mortgaged Property. Lender shall have the right to rent the Mortgaged Property for the account of Mortgagor, for any term, including beyond the discharge or foreclosure of this Mortgage, and to deduct from such Rents all costs, expenses, and liabilities incurred by Lender in collecting such Rents and in managing, operating, maintaining, protecting, or preserving the Mortgaged Property and apply the remainder of such Rents to the Indebtedness in such manner as Lender may elect. All such costs, expenses, and liabilities incurred by Lender, if not paid out of Rents, shall constitute a part of the Indebtedness and shall bear interest from the date of expenditure until paid at the Default Rate. Lender shall not be liable for any loss sustained by Mortgagor resulting from any failure to let the Mortgaged Property, or from any other act or omission of the Lender in managing the Mortgaged Property, unless such loss is caused by the willful misconduct of Lender, nor shall Lender be obligated to perform or discharge any obligation, duty, or liability under any Lease or under or by reason hereof or the exercise of rights or remedies hereunder.

97647872

UNOFFICIAL COPY

If necessary to possess the Mortgaged Property, Lender may invoke any legal remedies to dispossess Mortgagor, including actions for forcible entry and detainer, trespass to try title, and restitution.

(c) Right to Accelerate. Lender may, without notice, demand, presentment, notice of nonpayment or nonperformance, protest, notice of protest, notice of intent to accelerate, notice of acceleration, or any other notice or any other action, all of which are hereby waived by Mortgagor for itself and on behalf of all other parties obligated in any manner whatsoever on the Indebtedness, declare the entire unpaid balance of the Indebtedness, including the applicable Make Whole Amount, immediately due and payable.

(d) Lender's Judicial Remedies. Lender may proceed by suit or suits, at law or in equity, to enforce the payment of the Indebtedness and the performance and discharge of the Obligations in accordance with the terms hereof, and of the Note and the other Loan Documents, to foreclose the liens and security interests of this Mortgage as against all or any part of the Mortgaged Property, and to have all or any part of the Mortgaged Property sold under the judgment or decree of a court of competent jurisdiction.

(e) Lender's Right to Appointment of Receiver. Lender shall be entitled, without notice to Mortgagor, to the appointment of a receiver(s) of the Mortgaged Property and of the Rents, and Mortgagor hereby irrevocably consents to the appointment of a receiver(s). Any receiver appointed pursuant to the provisions of this subsection shall have the usual powers and duties of receivers in such matters.

(f) Foreclosure -- Power of Sale. Lender may institute a proceeding or proceedings, judicial or private, by advertisement or otherwise, for the complete or partial foreclosure of this Mortgage or the complete or partial sale of the Mortgaged Property under the power of sale contained herein or under any applicable provision of law. Lender may sell the Mortgaged Property, and all estate, right, title, interest, claim and demand of Mortgagor therein, and all rights of redemption thereof, at one or more sales, as an entirety or in parcels, with such elements of real and/or personal property, and at such time and place and upon such terms as it may deem expedient, or as may be required by applicable law; and, in the event of a sale, by foreclosure or otherwise, of less than all of the Mortgaged Property, this Mortgage shall continue as a lien and security interest on the remaining portion of the Mortgaged Property. Mortgagor hereby waives, for itself and on behalf of any Guarantor or Indemnitor, any right to direct the order in which the Mortgaged Property or any parcel that is a part thereof is sold.

Subject to the provisions or other requirements of law and except as otherwise provided herein, the following provisions shall apply to any sale or sales of all or any portion of the

UNOFFICIAL COPY

Mortgaged Property under or by virtue of this Section 9.1(f), whether made under the power of sale herein granted or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale:

(i) Lender may conduct any number of sales from time to time. The power of sale set forth herein shall not be exhausted by any one or more such sales as to any part of the Mortgaged Property which shall not have been sold, nor by any sale which is not completed or is defective in Lender's opinion, until the Indebtedness shall have been paid in full;

(ii) Any sale may be postponed or adjourned by public announcement at the time and place appointed for such sale or for such postponed or adjourned sale without further notice;

(iii) After each sale, Lender or an officer of any court empowered to do so shall execute and deliver to the purchaser or purchasers at such sale a good and sufficient instrument or instruments granting, conveying, assigning and transferring all right, title and interest of Mortgagor or Beneficiary in and to the property and rights sold and shall receive the proceeds of said sale or sales and apply the same as herein provided. Lender is hereby appointed the true and lawful attorney-in-fact of Mortgagor and Beneficiary, which appointment is coupled with an interest and irrevocable, to make all necessary conveyances, assignments, transfers and deliveries of the property and rights so sold, and for that purpose Lender may execute all necessary instruments of conveyance, assignment, transfer and delivery, and may substitute one or more persons with like power. Mortgagor and Beneficiary hereby ratifying and confirming all that said attorney or such substitute or substitutes shall lawfully do by virtue thereof;

(iv) Any purchaser of any property or rights sold shall not be bound to see to the application of such purchase price or any part thereof upon or for any trust or purpose of this Mortgage or, in any manner whatsoever, be answerable for any loss, misapplication or non-application of any such purchase money, or part thereof, or be bound to inquire as to the authorization, necessity, expediency or regularity of any such sale;

(v) Any sale or sales shall operate to divest all of the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of Mortgagor and Beneficiary in and to the properties and rights so sold, and shall be a perpetual bar both at law and in equity against Mortgagor and Beneficiary and any and all persons claiming or who may claim the same, or any part thereof or any interest therein, by,

97647872

UNOFFICIAL COPY

through or under Mortgagor or Beneficiary to the fullest extent permitted by applicable law;

(vi) Upon any such sale or sales, Lender may bid for and acquire the Mortgaged Property and, in lieu of paying cash therefor, may make settlement for the purchase price by crediting against the Indebtedness the amount of the bid made therefor, after deducting therefrom the expenses of the sale, the cost of any enforcement proceeding hereunder, and any other sums which Lender is authorized to deduct under the terms hereof, to the extent necessary to satisfy such bid; and

(vii) Upon any such sale, it shall not be necessary for Lender or any public officer acting under execution or order of court to have present or constructive possession of the Mortgaged Property.

(g) Lender's Uniform Commercial Code Remedies. The Lender may exercise its rights of enforcement with respect to Personalty, Fixtures, Contracts, Permits, Leases and Easements under the Code; and, in conjunction with, in addition to or in substitution for the rights and remedies under the Code:

(i) Lender may, without demand or notice to Mortgagor or Beneficiary, enter upon the Mortgaged Property to take possession of, assemble, receive, and collect the Personalty;

(ii) Lender may require Mortgagor or Beneficiary to assemble the Personalty and make it available at such place as the Lender designates which is mutually convenient to allow the Lender to take possession or dispose of the Personalty;

(iii) written notice mailed to Mortgagor or Beneficiary as provided herein at least ten (10) days prior to the date of public sale of the Personalty or prior to the date after which private sale of the Personalty will be made shall constitute reasonable notice;

(iv) any sale made pursuant to the provisions of this subsection shall be deemed to have been a public sale conducted in a commercially reasonable manner if held contemporaneously with the sale of all or a portion of the Land and Improvements under power of sale as provided herein upon giving the same notice with respect to the sale of the Personalty hereunder as is required for such sale of all or a portion of the Land and Improvements under power of sale, and such sale shall be deemed to be pursuant to a security agreement covering both real and personal property under the Code;

97647872

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

(v) in the event of a foreclosure sale, whether made by Lender under the terms hereof or under judgment of a court, the Personalty and the other Mortgaged Property may, at the option of the Lender, be sold as a whole at a single sale;

(vi) it shall not be necessary that the Lender take possession of the Personalty, prior to the time that any sale pursuant to the provisions of this subsection is conducted, and it shall not be necessary that the Personalty be present at the location of such sale;

(vii) after notification, if any, as hereafter provided in this subsection, Lender may sell, lease, or otherwise dispose of the Personalty, in one or more parcels at public or private sale or sales, at Lender's offices or elsewhere, for cash, on credit, or for future delivery. Mortgagor shall be liable for all expenses of retaking, holding, preparing for sale or the like and all attorneys' fees, legal expenses, and all other costs and expenses incurred by Lender in connection with collection of the Indebtedness and the enforcement of Lender's rights under the Loan Documents. Lender shall apply the proceeds of the sale of the Personalty against the Indebtedness in accordance with the provisions of Section 9.3 (Application of Foreclosure and Other Proceeds). Mortgagor waives, for itself and on behalf of all Guarantors or Indemnitors, all rights of marshaling in respect of the Personalty for itself, and on behalf of each Guarantor and Indemnitor, and

(viii) Lender may appoint or delegate any one or more persons as agent to perform any act or acts necessary or incident to any sale held by Lender, including the sending of notices and the conduct of the sale, but in the name and on behalf of Lender.

(h) Other Rights. Lender (i) may surrender the insurance policies maintained pursuant to Section 4.6 (Maintenance of Insurance: Waiver of Subrogation), and upon receipt shall apply the unearned premiums as a credit on the Indebtedness, in accordance with the provisions of Section 9.3 (Application of Foreclosure and Other Proceeds), and, in connection therewith, Mortgagor and Beneficiary hereby irrevocably appoint Lender as agent and attorney-in-fact for Mortgagor and Beneficiary, coupled with an interest, to collect such premium; (ii) may apply the reserve for Impositions and Insurance Premiums, if any, required by this Mortgage and any letters of credit, certificates of deposit, escrows or reserves for tenant improvements or other expenses, and any other funds or deposits maintained pursuant to the Loan Documents toward payment of the Indebtedness in accordance with Section 9.3 (Application of Foreclosure and Other Proceeds); and (iii) shall have and may exercise any and all other rights and remedies which Lender may have at law or in equity, or by virtue of any Loan Document or under the Code, or otherwise.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

9.2. Possession After Foreclosure

If the liens or security interests hereof shall be foreclosed by power of sale granted herein, by judicial action, or otherwise, the purchaser at any such sale shall receive, as an incident to purchaser's ownership, immediate possession of the property purchased, and if Mortgagor or Mortgagor's successors shall hold possession of said property subsequent to foreclosure, Mortgagor and Mortgagor's successors shall be considered as tenants at sufferance of the purchaser at foreclosure sale (without limitation of other rights or remedies, at a rental rate of 150% of the fair market rental rate per day, due and payable daily, based upon the value of the portion of the Mortgaged Property so occupied and sold to such purchaser), and anyone occupying such portion of the Mortgaged Property, after demand is made for possession thereof, shall be guilty of forcible detainer and shall be subject to eviction and removal, forcibly or otherwise, with or without process of law, and all damages by reason thereof are hereby expressly waived.

9.3. Application of Foreclosure and Other Proceeds

The proceeds from any sale, lease, or other disposition made pursuant to this Article IX, and the proceeds from the surrender of any insurance policies pursuant hereto, and any Rents collected by Lender from the Mortgaged Property, and the reserve for Impositions and Insurance Premiums, if any, required by the provisions of this Mortgage or condemnation awards and other sums received pursuant to Section 9.1 (Lender's Remedies Upon Default) hereof, and proceeds from insurance or condemnation which Lender elects to apply to the Indebtedness, shall be applied by Lender to the Indebtedness in the following order and priority: (i) first to the payment of all expenses of advertising, selling, and conveying the Mortgaged Property, and/or prosecuting or otherwise collecting Rents, proceeds, premiums, or other sums, and to the payment of all expenses, liabilities and advances made or incurred by Lender hereunder, together with interest thereon at the Default Rate; (ii) next, to such portions of the indebtedness and in such amounts as Lender may determine; (iii) next, to the extent permitted by law, to be set aside by Lender as adequate security in its judgment for the payment of sums which thereafter be required to be paid by Lender arising out of any obligations or liability with respect to which Mortgagor has agreed to indemnify or reimburse Lender, but which sums are contingent or not yet due and payable or liquidated; (iv) next to those persons legally entitled thereto as holders of any inferior liens covering the Mortgaged Property, if any, or otherwise, in order of the priority of such inferior liens (Lender shall hereby be entitled to rely exclusively upon a commitment for title insurance issued to determine such priority); and (v) finally, to the Mortgagor. The application of proceeds of sale or other proceeds as otherwise provided herein shall be deemed to be a payment of the Indebtedness like any other payment. The balance of the Indebtedness remaining unpaid, if any, shall remain fully due and owing in accordance with the terms of the Note or the other Loan Documents.

9.4. Miscellaneous Matters Relating to Exercise of Remedies

(a) In case Lender shall have proceeded to invoke any right, remedy, or recourse permitted under the Loan Documents and shall thereafter elect to discontinue or abandon same for any reason, Lender shall have the unqualified

97647872

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

right so to do and, in such event, Mortgagor and Lender shall be restored to their former positions with respect to the Indebtedness, the Loan Documents, the Mortgaged Property or otherwise, and the rights, remedies, recourses and powers of Lender shall continue as if same had never been invoked.

(b) All rights, remedies, and recourses of Lender granted in the Note, this Mortgage, the other Loan Documents, any other pledge of collateral, or otherwise available at law or equity: (i) shall be cumulative and concurrent; (ii) may be pursued separately, successively, or concurrently against Mortgagor, the Mortgaged Property, or any one or more of them, or any other person, at the sole and absolute discretion of Lender, (iii) may be exercised as often as occasion therefor shall arise, it being agreed by Mortgagor that the exercise or failure to exercise any of same shall in no event be construed as a waiver or release thereof or of any other right, remedy, or recourse; (iv) shall be nonexclusive; (v) shall not be conditioned upon Lender exercising or pursuing any remedy in relation to the Mortgaged Property prior to Lender bringing suit to recover the Indebtedness or suit on the Obligations; and (vi) in the event Lender elects to bring suit on the Indebtedness and/or the Obligations and obtains a judgment against Mortgagor prior to exercising any remedies in relation to the Mortgaged Property, all liens and security interests, including the lien of this Mortgage, shall remain in full force and effect and may be exercised thereafter at Lender's option.

(c) Any statements of fact or other recitals made in any deed, bill of sale, or other instrument evidencing a foreclosure, and any statement made by Lender as to nonpayment of the Indebtedness, or as to the occurrence of any Event of Default, or as to Lender having declared all or any part of the Indebtedness to be due and payable, or as to the request to sell, or as to notice of time, place and terms of sale and of the property or rights to be sold having been duly given, or as to any other act or thing having been duly done by Mortgagor or Lender, shall be taken as prima facie evidence of the truth of the facts so stated and recited. Lender may appoint or delegate any one or more persons as agent to perform any act or acts necessary or incident to any sale so held, including the posting of notices and the conduct of sale.

(d) Lender may release, regardless of consideration, any part of the Mortgaged Property without, as to the remainder, in any way impairing, affecting, subordinating, or releasing the lien or security interests created by this Mortgage or the other Loan Documents or affecting the obligations of Mortgagor or any other party to pay the Indebtedness or perform and discharge the Obligations. For payment of the Indebtedness, Lender may resort to any of the collateral therefor in such order and manner as Lender may elect. No collateral heretofore, herewith, or hereafter taken by Lender shall in any manner impair or affect the collateral given pursuant to the Loan Documents.

UNOFFICIAL COPY

(e) Mortgagor and Beneficiary hereby waive, to the maximum extent permitted by law, any right of redemption arising in connection with any foreclosure of this Mortgage.

10. MISCELLANEOUS

10.1. Mortgagor's Right to Contest Certain Matters.

Notwithstanding the provisions of Sections 4.2 (Compliance with Legal Requirements), Sections 4.3 (Payment of Impositions) or 4.9 (Payment for Labor and Materials), Mortgagor shall not be in default for failure to pay or discharge any Imposition or mechanic's or materialman's lien asserted against the Mortgaged Property or to comply with any Legal Requirement if, and so long as: (i) Mortgagor shall have notified Lender of same within ten (10) days of obtaining knowledge thereof; (ii) Mortgagor shall diligently and in good faith contest the same by appropriate legal proceedings which shall operate to prevent the enforcement or collection of the same and the sale of the Mortgaged Property, to satisfy the same; (iii) if requested by Lender, and to the extent not otherwise provided for in the reserve fund established pursuant to Article V, Mortgagor shall have furnished to Lender a cash deposit, or an indemnity bond satisfactory to Lender with a surety satisfactory to Lender, in such amount as Lender deems advisable to prevent Lender from incurring any loss, cost, expense or damage as a result of any such contest, and to assure payment and performance of the matters under contest and to prevent any sale or forfeiture of the Mortgaged Property; (iv) Mortgagor shall promptly upon final determination thereof pay the amount of any such imposition or claim so determined, together with all costs, interest and penalties which may be payable in connection therewith, or comply with the applicable Legal Requirement, as the case may be; (v) the failure to pay the Imposition or mechanic's or materialman's lien claim or to comply with any Legal Requirements shall not constitute a default under any other deed of trust, mortgage or security interest covering or affecting any part of the Mortgaged Property, and (vi) notwithstanding the foregoing, Mortgagor shall immediately upon request of Lender pay any such imposition or claim or comply with the applicable Legal Requirement, as the case may be notwithstanding such contest, if in the opinion of Lender the Mortgaged Property shall be in jeopardy or in danger of being forfeited or foreclosed, (and if Mortgagor shall fail so to do, Lender may, but shall not be required to, pay, perform or cause to be discharged or bonded against any such imposition, claim, lien or Legal Requirement, and, Mortgagor shall reimburse Lender its cost thereof on demand, together with interest thereon at the Default Rate). Lender may pay over any such cash deposit made pursuant to clause (iii) above or part thereof to the claimant entitled thereto at any time when, in the judgment of Lender, the entitlement of such claimant is established.

10.2. Exculpation.

Beneficiary's liability hereunder is limited to the extent provided in Section 6.3 of the Note (Exculpation)

97647872

UNOFFICIAL COPY

10.3. Payment After Acceleration.

If, following the occurrence of an Event of Default, and an acceleration of the Indebtedness or any part thereof but prior to a foreclosure sale of the Mortgaged Property, Mortgagor shall tender to Lender the payment of an amount which is intended to be sufficient to satisfy the entire Indebtedness or the part thereof which has been accelerated, Mortgagor shall include within such payment the applicable Make Whole Amount, which is and shall be a part of the Indebtedness.

10.4. Notices.

All notices or other communications required or permitted to be given pursuant to this Mortgage shall be in writing and shall be considered as properly given (i) if mailed by first class United States mail, postage prepaid, registered or certified with return receipt requested, (ii) by delivering same in person to the intended addressee, or (iii) by delivery to Federal Express or another independent, nationally or locally recognized, third party commercial delivery service for same day or next day delivery. Notices shall be effective upon the earlier to occur of (a) the date received, or (b) one business day after delivery to Federal Express or such other delivery service, postage prepaid. For purposes of notice, the addresses of the parties shall be as set forth in this Mortgage; provided, however, that either party shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of ten (10) days' notice to the other party in the manner set forth herein. Lender shall endeavor to send a copy of all notices addressed to Mortgagor to the Julius Lorin Revocable Trust, 4001 West Devon Avenue, Suite 404, Chicago, Illinois 60646 and to David A. Saunders, Seyfarth, Shaw, Fairweather & Geraldson, 55 East Monroe Street, Suite 4200, Chicago, Illinois 60603, but failure of such persons to receive such notices shall neither invalidate nor impair the effectiveness of any such notice.

10.5. Covenants Running with the Land; Bind and Inure.

All Obligations contained in this Mortgage and the other Loan Documents are intended by Mortgagor and Lender to be, and shall be construed as, covenants running with the Mortgaged Property. Subject to the provisions of Section 4.21 (Transfers) hereof, all of the terms of the Loan Documents shall apply to, be binding upon, and inure to the benefit of the parties thereto, their successors, assigns, heirs, and legal representatives, and all other persons claiming by, through, or under them.

10.6. Waiver, Severability.

Any failure by Lender to insist, or any election by Lender not to insist, upon strict performance by Mortgagor or others of any of the terms, provisions, or conditions of the Loan Documents shall not be deemed to be a waiver of same or of any other terms, provisions, or conditions thereof, and Lender shall have the right at any time or times thereafter to insist upon strict performance by Mortgagor or others of any and all of such terms, provisions, and conditions. The Loan Documents are intended to be performed in accordance with, and only to the extent

97647872

UNOFFICIAL COPY

permitted by, all applicable Legal Requirements. If any provision of any of the Loan Documents or the application thereof to any person or circumstance shall, for any reason and to any extent, held to be invalid or unenforceable, then neither the remainder of the instrument in which such provision is contained nor the application of such provision to other persons or circumstances nor the other instruments referred to herein shall be affected thereby, but rather shall be enforced to the greatest extent permitted by law.

10.7. Counterparts.

To facilitate execution, this Mortgage may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature and acknowledgment of, or on behalf of, each party, or that the signature and acknowledgment of all persons required to bind any party, appear on each counterpart. All counterparts shall collectively constitute a single instrument.

10.8. Applicable Law, Jurisdiction.

This Mortgage shall be governed by and construed according to the laws of the state in which the Mortgaged Property is located. Any action or proceeding in connection with this Mortgage, the Note or any of the other Loan Documents shall be brought in a court of record in the State of Illinois or in the United States District Court for the Northern District of Illinois, the Mortgagor hereby consenting to the jurisdiction thereof over its person. Service of process may be made upon the Mortgagor by mailing a copy of the summons and any complaint to the Mortgagor, by certified or registered mail, return receipt requested, at the address to be used for the giving of notice to the Mortgagor under this Agreement. In any action or proceeding relating to this Mortgage or any of the other Loan Documents, the Mortgagor hereby waives any claim that any of the foregoing courts is an inconvenient forum.

10.9. Usury.

In the event the interest (including without limitation, at the Default Rate) or other payments required to be made under this Mortgage, the Note or any of the other Loan Documents or otherwise, shall at any time exceed the limit permitted by applicable laws (including without limitation, usury laws) (the "Legal Limits"), all such sums paid by Mortgagor or any Guarantor(s) or Indemnitor(s) for the period in question that exceed the Legal Limits, automatically and without further documentation or action by Mortgagor, any Guarantor(s) or Indemnitor(s) or Lender, shall be applied to the outstanding principal balance of the Note and to all accrued interest thereon that is permitted under applicable law, as a prepayment without obligation to pay any Make Whole Amount. If and to the extent that such application of excess sums to principal and permitted interest is also prohibited by applicable law, or if there would remain a portion of the excess sum after it is applied to principal and permitted interest, such excess sum or portion thereof shall be returned to Mortgagor. The provisions of this paragraph shall govern notwithstanding anything to the contrary in any of the Loan Documents.

97647872

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

10.10. Partial Payments.

Remittances in payment of any part of the Indebtedness other than in the required amount in funds immediately available at the place where the Note is payable shall not, regardless of any receipt or credit issued therefor, constitute payment until the required amount is actually received by Lender in funds immediately available at the place where the Note is payable.

10.11. Change of Security.

Any part of the Mortgaged Property may be released, regardless of consideration, by Lender from time to time without impairing, subordinating, or affecting in any way the lien, security interest, and other rights hereof against the remainder. The lien, security interest, and other rights granted hereby shall not be affected by any other security taken for the Indebtedness or Obligations, or any part thereof. The taking of additional collateral, or the amendment, extension, renewal, or rearrangement of the Indebtedness or Obligations, or any part thereof, shall not release or impair the lien, security interest, and other rights granted hereby, or affect the liability of any endorser or guarantor or improve the right of any junior lienholder, and this Mortgage, as well as any instrument given to secure a renewal, extension, renewal, or rearrangement of the Indebtedness or Obligations, or any part thereof, shall be and remain a first and prior lien, except as otherwise provided herein, on all of the Mortgaged Property not expressly released until the Indebtedness is fully paid and the Obligations are fully performed and discharged.

10.12. Headings for Convenience Only.

The headings of the Articles, Sections, and Subsections hereof are inserted for convenience of reference only and shall in no way alter, modify, or define, or be used in construing the text of such Articles, Sections, or Subsections.

10.13. Representation by Lender.

By accepting or approving anything required to be observed, performed, or fulfilled or to be given to Lender pursuant to the Loan Documents, Lender shall not be deemed to have warranted, consented to, or affirmed the sufficiency, legality, effectiveness, or legal effect of the same.

10.14. Lender's Right to Assign and Participate Interests.

Lender may, at any time, sell, transfer, assign, or grant participations in, the Note, this Mortgage and the Loan Documents, and Lender may forward to each assignee or participant, and each prospective assignee or participant, all documents and information which Lender now has or may hereafter acquire relating to the Indebtedness or Obligations and to Mortgagor, any Constituent Party, any Indemnitor and any Guarantor, and the Mortgaged Property.

97647872

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

10.15. Entire Agreement; Amendments in Writing.

This Mortgage and the other Loan Documents embody the final, entire Agreement among the parties hereto and supersede any and all prior commitments, agreements, representations, and understandings, whether written or oral, relating to the subject matter hereof and thereof and may not be contradicted or varied by evidence of prior, contemporaneous, or subsequent oral agreements or discussions of the parties hereto. There are no oral agreements among the parties hereto. The provisions of this Mortgage and the Loan Documents may be amended or waived only by an instrument in writing signed by the Mortgagor and Lender.

10.16. Waiver of Right to Trial by Jury.

MORTGAGOR, BENEFICIARY AND LENDER EACH HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT, PROCEEDING, OR COUNTERCLAIM THAT RELATES TO OR ARISES OUT OF ANY OF THE LOAN DOCUMENTS OR THE ACTS OR FAILURE TO ACT OF OR BY LENDER IN THE ENFORCEMENT OF ANY OF THE TERMS OR PROVISIONS OF THIS MORTGAGE OR THE OTHER LOAN DOCUMENTS OR BY BORROWER IN THE PERFORMANCE OF ANY OF THE TERMS OR PROVISIONS OF THIS MORTGAGE OR THE OTHER LOAN DOCUMENTS.

10.17. Rider.

The additional provisions set forth in the Rider are incorporated herein by reference.

10.18. Refinance of Existing Loan.

The loan secured by this instrument constitutes a refinance of a loan previously made by Lender to Mortgagor and Beneficiary (the "Existing Loan"). The Existing Loan shall not be deemed repaid, nor shall this instrument be deemed effective, until this instrument and the balance of the Loan Documents have been accepted in writing by Lender.

10.19. Mortgagor's Exculpatory.

Amalgamated Bank of Chicago is a party to this instrument, not in its individual capacity but as trustee under a Trust Agreement dated May 1, 1970 and known as Trust No. 2167. Insofar as the liability of Mortgagor is concerned, this instrument is enforceable only against, and any claims hereon are payable only out of, any trust property which may be held thereunder and any rents and proceeds therefrom, but this clause shall not affect Lender's remedies under any of the other Loan Instruments. Any and all liability of Amalgamated Trust and Savings Bank in its individual capacity is hereby expressly waived by Lender and its successors and assigns.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

IN WITNESS WHEREOF, the undersigned has caused this Mortgage to be duly executed, sealed and delivered as of the date first set forth above.


MORTGAGOR:

Amalgamated Bank of Chicago, not personally but solely as Trustee under a Trust Agreement dated May 1, 1970 and known as Trust Number 2167

ATTEST:


TRUST OFFICER ~~See over~~

By:


Name: IRVING S. POLANSKY
Title: SENIOR VICE PRESIDENT

Hereunto Duly Authorized

Property of Cook County Clerk's Office

97647872

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY


JOINDER OF BENEFICIARY

The undersigned, being the owner of one hundred percent of the beneficial interest in Mortgagor hereby joins in this instrument for the purpose of being fully bound by all of the agreements, obligations, liabilities, covenants, representations, warranties and undertakings of Mortgagor set forth herein to the same extent as if the such agreements, obligations, liabilities, covenants, representations, warranties and undertakings were the personal liability of the undersigned. Notwithstanding the foregoing, the liability of the undersigned shall be limited according to the provisions of Section 6.3 of the Note (Exculpation).

BENEFICIARY:

**LUNT REALTY ASSOCIATES, an Illinois
general partnership**

**By: Kaiser Investments, Ltd., an Illinois
Limited partnership, a general partner**

By 
Walter Kaiser, a general partner

Property of Cook County Clerk's Office

97647872

UNOFFICIAL COPY

RIDER TO MORTGAGE AND SECURITY AGREEMENT FROM THE AMALGAMATED TRUST AND SAVINGS BANK, TRUSTEE U/T/N 2167 ("BORROWER") IN FAVOR OF ALLMERICA FINANCIAL LIFE INSURANCE AND ANNUITY COMPANY ("LENDER")

The following provisions are attached to and incorporated into the Mortgage and Security Agreement referenced above (the "Mortgage"). Unless otherwise defined herein, all capitalized terms used in this Rider shall have the meaning ascribed to them in the Mortgage.

R-1. **Illinois Responsible Property Transfer Act.** Mortgagor hereby represents, warrants and certifies that: (i) the execution and delivery of the Loan Documents is not a transfer of "real property", as "real property" is defined in the Illinois Responsible Property Transfer Act (735 ILCS 90/1 et seq.), as amended from time to time ("RPTA"); (ii) there are no underground storage tanks located on, under or about the Mortgaged Property which are subject to the notification requirements under Section 9002 of the Solid Waste Disposal Act, as now or hereafter amended (42 U.S.C. § 6991), and (iii) there is no facility located on or at the Mortgaged Property which is subject to the reporting requirements of Section 312 of the federal Emergency Planning and Community Right to Know Act of 1986 and the federal regulations promulgated thereunder (42 U.S.C. § 11022), as "facility" is defined in RPTA.

R-2. **Waiver of Appraisal, Valuation, Stay, Extension and Redemption Laws.** Mortgagor hereby waives any and all rights of redemption. Mortgagor further agrees, to the full extent permitted by law, that in case of an Event of Default, neither Mortgagor nor anyone claiming through or under it will set up, claim or seek to take advantage of any reinstatement, appraisal, valuation, stay or extension laws now or hereafter in force, or take any other action which would prevent or hinder the enforcement or foreclosure of this Mortgage or the absolute sale of the Mortgaged Property or the final and absolute putting into possession thereof, immediately after such sale, of the purchaser thereof. Mortgagor, for itself and all who may at any time claim through or under it, hereby waives, to the full extent that it may lawfully so do, the benefit of all such laws, and any and all right to have the assets comprising the Mortgaged Property marshalled upon any foreclosure of the lien hereof and agrees that Lender or any court having jurisdiction to foreclose such lien may sell the Mortgaged Property in part or as an entirety. Mortgagor acknowledges that the transaction of which this Mortgage is a part is a transaction which does not include either agricultural real estate (as defined in Section 15-1201 of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15 - 1101 et seq.) (herein called the "Act")) or residential real estate (as defined in Section 15-1219 of the Act), and to the full extent permitted by law, hereby voluntarily and knowingly waives its rights to reinstatement and redemption as allowed under Section 15-1601 of the Act.

97647872

UNOFFICIAL COPY

EXHIBIT "A"

Legal Description

PARCEL 1:

LOT 17 (EXCEPT THE EAST 1300 FEET AS MEASURED AT RIGHT ANGLES TO THE EAST LINE THEREOF) IN CENTEX INDUSTRIAL PARK UNIT 3, BEING A SUBDIVISION OF SECTION 35, TOWNSHIP 41 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2

THAT PART OF LOT 7 IN CENTEX INDUSTRIAL PARK UNIT 1, BEING A SUBDIVISION IN SECTION 35, TOWNSHIP 41 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING EAST OF A LINE DRAWN FROM A POINT ON THE NORTH LINE OF LOT 7 AFORESAID, 205.98 FEET WEST OF THE NORTH EAST CORNER THEREOF, TO A POINT ON THE SOUTH LINE OF LOT 7 AFORESAID, 205.83 FEET WEST OF THE SOUTH EAST CORNER THEREOF (EXCEPT THE SOUTH 25 FEET THEREOF) IN COOK COUNTY, ILLINOIS.

PARCEL 3:

LICENSE GRANTED BY ELK GROVE VILLAGE, A MUNICIPAL CORPORATION, TO AMALGAMATED TRUST AND SAVINGS BANK, AS TRUSTEE UNDER TRUST NUMBER 2167, DATED APRIL 27, 1976 AND RECORDED MAY 20, 1976 AS DOCUMENT 23491656 AND FILED AS DOCUMENT LR2870443, AS EXTENDED BY AGREEMENT BETWEEN SAID PARTIES, DATED NOVEMBER 12, 1985 AND RECORDED DECEMBER 11, 1986 AS DOCUMENT 86593640 AND FILED DECEMBER 11, 1986 AS DOCUMENT LR3574855, GRANTING SAID TRUSTEE THE RIGHT TO CONSTRUCT CULVERT PIPES, AS DEFINED THEREIN; TO PARK MOTOR VEHICLES ON THE AREA IMPROVED, AS DEFINED THEREIN; TO PERMIT INGRESS AND EGRESS BY PEDESTRIANS AND MOTOR VEHICLES ACROSS THE AREA, AS DEFINED THEREIN; AND TO INSTALL PEDESTRIAN BRIDGE CONNECTING PARCELS 1 AND 2 AFORESAID, SAID BRIDGE NOT TO EXCEED 10 FEET IN WIDTH AS THEREIN DEFINED, OVER AND ACROSS THAT PORTION OF SECTION 35, TOWNSHIP 41 NORTH, RANGE 11, BEING 40 FEET WIDE AND 675.07 FEET LONG, BOUNDED BY THE SOUTH LINE OF THE RIGHT OF WAY FOR LUNT AVENUE ON THE NORTH BY LOT 7 IN CENTEX INDUSTRIAL PARK UNIT 1, ON THE WEST AND BY LOT 17 IN CENTEX INDUSTRIAL PARK UNIT 3, ON THE EAST, IN COOK COUNTY, ILLINOIS.

P.I.N.: 08-35-104-034, 08-35-104-070, 08-35-104-071.

COMMONLY KNOWN AS: 1905-1945 Lunt Avenue, Elk Grove Village, Illinois.

97647872

UNOFFICIAL COPY

EXHIBIT "B"

Permitted Exceptions

Property of Cook County Clerk's Office

97647872

UNOFFICIAL COPY

LEASE MADE BY AMALGAMATED TRUST AND SAVINGS BANK, A CORPORATION OF ILLINOIS, AS TRUSTEE UNDER TRUST AGREEMENT DATED MAY 1, 1957 AND KNOWN AS TRUST NUMBER 2167, LESSOR AND BETWEEN SPERRY RAND CORPORATION, BY ITS SPERRY UNIVAC DIVISION, A DELAWARE CORPORATION, LESSEE, DATED MAY 6, 1976, A MEMORANDUM OF WHICH LEASE WAS RECORDED MAY 17, 1976 AS DOCUMENT 23485949 AND FILED AS DOCUMENT LP2969734 WHICH LEASE DEMISES THE LAND FOR A TERM OF 10 YRS. Extended by an unrecorded lease extension agreement dated May 1, 1986 & by and between Amalgamated Trust & Savings Bank as trustee under trust agreement dated May 1, 1986 & known as 2167 and Sperry Corp., a Delaware corp., which extends the lease to May 31, 1996.

EASEMENT FOR DRAINAGE AS SHOWN ON THE PLAT OF CENTEX INDUSTRIAL PARK UNIT NO. 3 AFORESAID OVER THE SOUTH 15 FEET OF THE LAND.

(AFFECTS PARCEL 1).

EASEMENT FOR SEWER, WATER AND DRAINAGE AS SHOWN ON THE PLAT OF CENTEX INDUSTRIAL PARK UNIT NO. 3 AFORESAID OVER THE NORTH 25 FEET OF THE LAND.

(AFFECTS PARCEL 1).

EASEMENT FOR DRAINAGE PURPOSES OVER THE EAST 50 FEET OF THE WEST 795.87 FEET OF CENTEX INDUSTRIAL PARK SUBDIVISION AS DEDICATED FOR DRAINAGE PURPOSES ON THE PLAT OF CENTEX INDUSTRIAL PARK RECORDED NOVEMBER 26, 1957 AS DOCUMENT 17075036.

(AFFECTS THE WEST 10 FEET OF THE SOUTH 130.84 FEET OF LOT 17).
NOTE: THE PLAT OF SUBDIVISION RECORDED MAY 1, 1959 AS DOCUMENT 17525851 REFERS TO THE SAID EASEMENT AS BEING VACATED, HOWEVER, WE FIND NO SUCH VACATION OF RECORD.

(AFFECTS PARCEL 1).

COVENANTS AND RESTRICTIONS CONTAINED IN THE TRUSTEE'S DEED FROM CHICAGO TITLE AND TRUST COMPANY, AS TRUSTEE UNDER TRUST NO. 38909 TO BASIC PRODUCTS CORPORATION, A CORPORATION OF WISCONSIN, DATED AUGUST 17, 1960 AND RECORDED AUGUST 19, 1960 AS DOCUMENT 17941348 AND FILED AS DOCUMENT LR 1937964 RELATING TO THE LOCATION, ACCESSORY FACILITIES, MATERIALS, TYPE AND CONSTRUCTION OF BUILDINGS TO BE ERRECTED ON THE LAND AND TO USE AND MAINTENANCE OF THE LAND.

NOTE: SAID INSTRUMENT CONTAINS NO PROVISION FOR A FORFEITURE OR FOR REVERSION OF TITLE IN CASE OF BREACH OF CONDITION.

(AFFECTS PARCEL 1).

97647872

UNOFFICIAL COPY

BUILDING LINE OVER THE NORTH 25 FEET OF THE LAND AS SHOWN ON THE PLAT OF CENTEX INDUSTRIAL PARK UNIT NO. 3 RECORDED MAY 1, 1959 AS DOCUMENT 17525861 AND FILED AS DOCUMENT LR 1958615.

(AFFECTS PARCEL 1).

EASEMENT FOR CONSTRUCTING, MAINTAINING, ETC. OF UTILITIES OVER, ACROSS, UNDER AND THROUGH THE DESIGNATED SET BACK AREAS BETWEEN THE BUILDING LINES AND PROPERTY LINES AS RESTATED TO CHICAGO TITLE AND TRUST COMPANY, AS TRUSTEE UNDER TRUST AGREEMENT DATED DECEMBER 26, 1956 AND KNOWN AS TRUST NUMBER 38040 IN TRUSTEE'S DEED TO BASIC PRODUCTS CORPORATION, A CORPORATION OF WISCONSIN DATED AUGUST 17, 1960 AND RECORDED AUGUST 19, 1960 AS DOCUMENT 17941848 AND FILED AS DOCUMENT LR 1937964.

(AFFECTS PARCEL 1).

COVENANTS AND RESTRICTIONS AS CONTAINED IN THE DEED FROM CHICAGO TITLE AND TRUST COMPANY, A CORPORATION OF ILLINOIS, AS TRUSTEE UNDER TRUST NO. 38909 TO BASIC PRODUCTS CORPORATION, A CORPORATION OF WISCONSIN DATED JULY 14, 1958 AND RECORDED JULY 28, 1958 AS DOCUMENT 17272321, RELATING TO THE LOCATION AND HEIGHT OF CERTAIN IMPROVEMENTS, HEDGES, ETC. TO PARKING FACILITIES, TO SANITATION FACILITIES, USE OF THE LAND, INCLUDING LANDSCAPING AND LOCATION, CONSTRUCTION, AND USE OF BUILDINGS. NOTE: SAID INSTRUMENT CONTAINS NO PROVISION FOR A FORFEITURE OR FOR REVERSION OF TITLE IN CASE OF BREACH OF CONDITION.

(AFFECTS PARCEL 2).

EASEMENTS AND RESERVATIONS FOR UTILITY SERVICES WITHIN THE EASEMENT AREA BETWEEN THE PROPERTY LINES AND BUILDINGS LINES TOGETHER WITH THE RIGHT TO GRANT SUCH RIGHTS TO OTHERS AS RESERVED IN THE DEED FROM CHICAGO TITLE AND TRUST COMPANY, AS TRUSTEE UNDER TRUST NO. 38909 TO BASIC PRODUCTS CORPORATION, DATED JULY 14, 1958 AND RECORDED JULY 28, 1958 AS DOCUMENT 17272321.

(AFFECTS PARCEL 2).

EASEMENT IN FAVOR OF ELK GROVE WATER AND SEWER COMPANY, AN ILLINOIS CORPORATION TO INSTALL AND MAINTAIN ITS FACILITIES WITHIN THE WEST 25 FEET OF THE LAND AS CONTAINED IN THE PLAT OF CENTEX INDUSTRIAL PARK, UNIT 1 AFORESAID.

(AFFECTS PARCEL 2).

25 FOOT BUILDING LINE AS SHOWN ON THE PLAT OF CENTEX INDUSTRIAL PARK UNIT 1 AFORESAID.

(AFFECTS PARCEL 2) (AFFECTS WEST LINE OF THE LAND).

97647872

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

TERMS, CONDITIONS, AND LIMITATIONS AS CONTAINED IN THE LICENSE AGREEMENT DATED APRIL 27, 1976 AND RECORDED MAY 20, 1976 AS DOCUMENT 23491656 AND FILED AS DOCUMENT LR2870443 MADE BY ELK GROVE VILLAGE, A MUNICIPAL CORPORATION AND BETWEEN AMALGAMATED TRUST AND SAVINGS BANK, A CORPORATION OF ILLINOIS, AS TRUSTEE UNDER TRUST AGREEMENT DATED APRIL 27, 1976 AND KNOWN AS TRUST NUMBER 2175 as amended by Agreement to Extend License by and between said parties dated November 12, 1986.

ENCROACHMENT OF THE CONCRETE CURB LOCATED ON PARCEL ONE OF SAID LAND OVER AND ONTO THE PUBLIC UTILITY EASEMENT NOTED ABOVE AT 15 AND 19 BY .50 FEET AS DISCLOSED BY THE PLAT OF SURVEY MADE BY GRENLE AND BIEDERMANN, INC., DATED NOVEMBER 14, 1979 AS NUMBER 793666.

ENCROACHMENT OF THE CONCRETE CURB LOCATED ON PARCEL ONE OF SAID LAND OVER AND ONTO THE LAND LYING EAST OF AND ADJOINING SAID LAND BY .03 FEET AS DISCLOSED BY THE AFORESAID SURVEY.

ENCROACHMENT OF THE METAL SIGN LOCATED ON SAID LAND OVER AND ONTO THE LAND LYING NORTH OF AND ADJOINING SAID LAND BY AN UNDISCLOSED AMOUNT AND ALSO OVER AND ONTO THE PUBLIC UTILITY EASEMENT NOTED ABOVE AT 15 AND 19 BY 17.5 FEET AS DISCLOSED BY THE AFORESAID SURVEY.

GENERAL REAL ESTATE TAXES NOT YET DUE AND PAYABLE.

97647872

UNOFFICIAL COPY

EXHIBIT "C"

Definitions

The following capitalized terms shall have the meanings set forth below:

Affiliate: Any person or entity directly or indirectly controlling, controlled by or under common control with, or having a direct or indirect ownership interest in, another person or entity.

Assignment of Leases: The Assignment of Leases and Rents of even date executed by Mortgagor and Beneficiary for the benefit of Lender.

Beneficiary: Lunt Realty Associates, an Illinois general partnership and the owner of one hundred percent of the beneficial interest in Mortgagor.

Borrower's Certificate: That certain Borrower's Closing Certificate of even date executed by Beneficiary for the benefit of Lender setting forth certain representations and warranties of Beneficiary.

Chief Financial Officer: The officer, partner or other individual with primary authority for financial matters of Beneficiary.

Code: The Uniform Commercial Code, as amended from time to time, in effect in the state in which the Mortgaged Property is located.

Constituent Party: Each corporation, shareholder, partnership, partner, trustee, beneficiary, joint venture, joint venturer or other entity which directly or indirectly (through another such corporation, shareholder, partnership, partner, trustee, beneficiary, joint venture, joint venturer or entity, or a series of the same) owns a beneficial interest in Mortgagor, other than Beneficiary.

Contracts: All of the following, whether now or hereafter existing, relating to the operation, maintenance, or ownership of the Mortgaged Property: (i) all contracts and rights (except Leases), including but not limited to management agreements, maintenance agreements and service contracts and all deposits and rights to payment and reimbursement thereunder; (ii) all warranties and guarantees; and (iii) contracts for the purchase of the Mortgaged Property, including all deposits and letters of credit provided by the purchasers thereunder, together with all payments, income, and profits arising from sale of the Mortgaged Property or from such contracts.

Debtor Relief Laws: Title 11 of the United States Code or any other applicable federal or state law, as now or hereafter in effect, relating to bankruptcy, insolvency, liquidation, receivership, reorganization, arrangement or composition, extension or adjustment of debts, or similar laws affecting the rights of creditors.

Default Rate: As defined in the Note.

UNOFFICIAL COPY

Employee Benefit Plan: An employee benefit plan as defined in Section 3(3) of the Employment Retirement Income Security Act of 1974, as now or hereafter amended.

Environmental Compliance and Indemnification Agreement: That certain Environmental Compliance and Indemnification Agreement of even date executed in connection with the Loan for the benefit of Lender.

Event of Default: As defined in Article VIII.

Fixtures: All materials, supplies, equipment, systems, apparatus, and other items now owned or hereafter acquired by Beneficiary or Mortgagor and now or hereafter attached to, installed in, or used in connection with the Improvements, the Land or Personalty, together with all appurtenances, replacements, betterments, and substitutions for any of the foregoing and the proceeds thereof.

Governmental Authority: Any and all applicable courts, boards, agencies, commissions, offices, or authorities for any governmental unit now or hereafter existing.

Guarantor (individually and/or collectively, as the context may require): As defined in the Guaranty.

Guaranty (individually and/or collectively, as the context may require): That or those instruments of guaranty, if any, now or hereafter in effect, from Guarantor to Lender guaranteeing the repayment of all or any part of the Indebtedness or the satisfaction of, or continued compliance with, the Obligations, or both.

Hazardous Materials: As defined in the Environmental Compliance and Indemnification Agreement.

Impositions: (i) All real estate and personal property taxes, charges, assessments, and levies and any interest, costs, or penalties with respect thereto, of any kind and nature whatsoever which at any time may be assessed, levied, or imposed upon the Mortgaged Property or the ownership, use, occupancy, or enjoyment thereof, (ii) any sums payable for or under any easement, license, or agreement maintained for the benefit of the Mortgaged Property, (iii) utility charges and fees relating to the Mortgaged Property, and (iv) assessments and charges arising under any subdivision, condominium, planned unit development, or other declarations, restrictions, regimes, or agreements affecting the Mortgaged Property, and (v) ground rents under any ground lease permitted by Lender. In the event Lender, its successors or assigns, acquires title to the Mortgaged Property through foreclosure or deed in lieu thereof, Impositions shall include all of the above, prorated from the date of accrual to the date of foreclosure or acceptance of a deed in lieu thereof.

Improvements: All buildings, parking areas, structures and other improvements, and any and all additions or appurtenances thereto, now or hereafter located on the Land.

UNOFFICIAL COPY

Indebtedness: (i) The principal of, interest on, or other sums evidenced by or due under the Note or advanced under or secured by the Loan Documents; and (ii) any other amounts, payments, or Insurance Premiums payable under the Note, this Mortgage or the other Loan Documents.

Indemnification Agreement: The Indemnification and Guaranty Agreement of even date executed by the persons named therein indemnifying Lender against loss or damage resulting from certain matters.

Indemnitor (individually and/or collectively, as the context may require): As defined in the Indemnification Agreement.

Insurance Premiums: All premiums required to be paid in order to keep in force and effect all of the policies of insurance required to be maintained under this Mortgage.

Land: The real property or interest therein described in Exhibit A attached to the Mortgage and incorporated into the Mortgage by this reference, together with all right, title, interest, and privileges of Mortgagor in and to (a) all rights, easements, air rights, reciprocal operating agreements, covenants, conditions and restrictions and similar title matters appurtenant to or used in connection with such real property or the Improvements; (b) all streets, rights-of-way, licenses, vehicle parking rights and other rights appurtenant to or used in connection with such real property or the Improvements; (c) any strips or gores of real property between such real property and abutting or adjacent properties; (d) all water and water rights, mineral rights, timber and crops; and (e) appurtenances, reversions and remainders in, to or relating to such real property.

Lease Termination and Modification Payments: Any payments or damages paid or required to be paid by any Lessee arising out of (i) any modification to a Lease (including, without limitation, modifications reducing the term, the demised premises or the rent due); (ii) Lessee's conduct under any Lease; (iii) the exercise by any Lessee of any right to terminate, modify the demised premises under, or modify the term of, any Lease; (iv) bankruptcy of Lessee; or (v) any cancellation, expiration or termination of any Lease (whether by virtue of a default, consensual agreement or otherwise).

Leases: Any and all leases, master leases, subleases, licenses, concessions, or other agreements (written or oral, now or hereafter in effect), including any renewals, extensions, amendments and supplements, which grant to third parties a possessory interest in and to, or the right to use, all or any part of the Mortgaged Property, together with all security and other deposits or payments made in connection therewith.

Legal Requirements: (i) All present and future laws, statutes, decisional law, rules, regulations, ordinances and permits of any Governmental Authority applicable to Beneficiary or Mortgagor, any Guarantor, any Indemnitor, or the Mortgaged Property, (ii) all covenants, conditions, and restrictions contained in any deeds or other instruments which relate to the Mortgaged Property, (iii) Mortgagor's, any Constituent Party's, Guarantor's or Indemnitor's presently or subsequently effective bylaws and articles of incorporation or partnership, limited

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

partnership, joint venture, trust, or other form of business association agreement, (iv) all of Mortgagor's and Beneficiary's obligations under all Leases, Contracts and Permits and all conditions thereof binding upon Mortgagor, Beneficiary or the Mortgaged Property.

Lender: As defined in the initial paragraph of this Mortgage.

Loan: As defined in the definition of Note.

Loan Documents: The Note, this Mortgage, the Assignment, the Borrower's Certificate, the Environmental Compliance and Indemnification Agreement, the Guaranty, if any, the Indemnification Agreement, the Escrow Agreement, if any, and any and all other documents now or hereafter executed by the Mortgagor, any Constituent Party or any Guarantor or Indemnitor, or any other person or party in connection with the payment of the Indebtedness or the performance of the Obligations.

Make Whole Amount: As defined in the Note.

Mortgaged Property: The Land, Fixtures, Improvements, Personalty, Contracts, Leases and Rents, and any interest of Mortgagor or Beneficiary now owned or hereafter acquired in and to the same, together with all other security and collateral of any nature now or hereafter given for the repayment of the Indebtedness or the performance and discharge of the Obligations. "Mortgaged Property" shall mean all or, where the context permits or requires, any portion of the above and all or, where the context permits or requires, any interest therein.

Note: That certain Promissory Note of even date incorporated herein by reference, executed by Mortgagor and payable to the order of Lender in the principal amount of Six Million Two Hundred Thousand Dollars (\$6,200,000) (the "Loan"), interest and principal being payable as therein specified, maturing on December 1, 2002, and secured by, among other things, this Mortgage; and any and all renewals, modifications, rearrangements, reinstatements, enlargements, or extensions of such promissory note or of any promissory note or notes given in renewal, modification, rearrangement, substitution or replacement therefor. A copy of the form of the Note is attached hereto as Exhibit D.

Obligations: Any and all of the covenants, conditions, warranties, representations, and other obligations (other than to repay the Indebtedness) made or undertaken by Mortgagor, Guarantor, Indemnitor or any other person or party to the Loan Documents as set forth in the Loan Documents, or the Leases, and any deed, lease, sublease, or other form of conveyance, or any other agreement pursuant to which Mortgagor is granted or is entitled to a possessory interest in the Land.

Permits: Permits, licenses, certificates and approvals issued by Governmental Authorities or otherwise necessary for the Mortgagor or the Improvements to comply with all Legal Requirements.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Permitted Exceptions: The matters listed on Exhibit B attached to the Mortgage which are incorporated into the Mortgage by this reference and the liens and security interests created by the Loan Documents.

Permitted Leases: As defined in the Assignment of Leases.

Personalty: All of the right, title, and interest of Beneficiary in and to (i) furniture, furnishings, equipment, machinery and goods; (ii) general intangibles, money, insurance proceeds, accounts, deposits held in escrow under any and all Leases, contract and subcontract rights, trademarks, tradenames and inventory; (iii) all refundable fees, deposits or other funds or evidences of credit or indebtedness deposited by or on behalf of Beneficiary with any Governmental Authority, corporation or provider of utility services; (iv) any awards, settlements, or compensation made by any Governmental Authority relating to the Mortgaged Property, including without limitation awards, proceeds and settlement amounts on account of condemnation or eminent domain; (v) tenant security deposits; (vi) other types of deposits and other benefits paid or payable by parties to Contracts other than Beneficiary; and (vii) all other personal property of any kind or character as defined in and subject to the provisions of the Code; any and all of which are now owned or hereafter acquired by Beneficiary, and which are now or hereafter situated in, on, or about the Land or the Improvements, or used in or needed for the complete and proper planning, development, construction, financing, use, occupancy, or operation thereof, or acquired (whether delivered to the Land or stored elsewhere) for use in or on the Land or the Improvements, together with all accessions, replacements, and substitutions thereto or therefor and the proceeds thereof. "Personalty" shall mean all or, where the context permits or requires, any portion of the above and all or, where the context permits or requires, any interest therein.

Prohibited Transaction: A transaction prohibited under Section 406 of the Employee Retirement Income Security Act of 1974, as now or hereafter amended.

Rating Agencies: Duff & Phelps Credit Rating Co., Moody's Investors Services, Standard & Poor's Corporation, and Fitch Investors' Service, Inc.

Rents: All of the rents, revenues, income, proceeds, reimbursements, common area maintenance charges, profits, security and other types of deposits and other benefits paid or payable by parties to Leases other than Mortgagor, for using, leasing, licensing, purchasing, operating from, residing in, selling, or otherwise enjoying all or any portion of the Mortgaged Property, whether due now or hereafter, including, without limitation, any Lease Termination and Modification Payments.

Scheduled Monthly Payment: As defined in the Note

Transfer: Any sale, purchase option, lease, exchange, assignment, conveyance, transfer, trade, mortgage, deed of trust, pledge, lien, security interest, encumbrance, charge, conditional sale or other title retention agreement or other transfer or disposition of all or any portion of the Mortgaged Property (or any interest therein) or all or any part of the direct or indirect beneficial ownership interest in Mortgagor or any Constituent Party but excluding the following:

97647872

UNOFFICIAL COPY

(a) sales or transfers of items of Personalty which have become obsolete or worn beyond practical use and which have been replaced by adequate substitutes having a similar utility and a value equal to or greater than the replaced items when new and which are not subject to any lien, lease or title retention agreement; (b) the Permitted Leases; and (c) the Permitted Exceptions.

Property of Cook County Clerk's Office

97647872

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT "D"

Form of Note

See Attached.

Property of Cook County Clerk's Office

97647872

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

PROMISSORY NOTE

By

Amalgamated Bank of Chicago, f/w/a Amalgamated Trust
and Savings Bank, not personally but solely as
Trustee under a Trust Agreement dated May 1, 1970
and known as Trust Number 2107 ("Mortgagor") and
Lunt Realty Associates, an Illinois general partnership ("Beneficiary")

to

Allmerica Financial Life Insurance and Annuity Company ("Lender")

August __, 1997

COPY

97647872

UNOFFICIAL COPY

TABLE OF CONTENTS

	<u>Page</u>
1. DEFINITIONS.....	1
1.1. Definitions.....	1
1.2. Other Defined Terms.....	2
1.3. All other capitalized terms not otherwise defined herein shall have the meanings given to them in the Mortgage.....	2
2. PAYMENTS.....	2
2.1. Scheduled Monthly Payments.....	2
2.2. Maturity.....	3
2.3. Form of Payment.....	3
3. PREPAYMENT.....	3
3.1. Permitted Prepayments.....	3
3.2. Prepayment of Insurance and Condemnation Proceeds.....	3
3.3. Other Prepayments.....	4
3.4. Acknowledgment of Agreement Regarding Make Whole Amounts.....	4
4. LATE CHARGE.....	4
4.1. Late Charge.....	4
5. EVENTS OF DEFAULT; ACCELERATION.....	4
5.1. Events of Default.....	4
5.2. Acceleration After Event of Default.....	4
5.3. Default Interest.....	5
5.4. Lender's Remedies; Waiver by Lender.....	5
6. MISCELLANEOUS.....	5
6.1. Security for This Note.....	5
6.2. Waiver of Defenses by Borrower.....	5
6.3. Exculpation.....	5
6.4. Notices.....	7
6.5. Applicable Law; Jurisdiction.....	7
6.6. Usury.....	8
6.7. Headings for Convenience Only.....	8
6.8. Entire Agreement; Amendments in Writing.....	8
6.9. Waiver of Right to Trial by Jury.....	8
6.10. Lender's Costs of Enforcement.....	9
6.11. Successors.....	9
6.12. Refinance of Existing Loan.....	9
6.13. Mortgagor's Exculpatory.....	9

97647872

UNOFFICIAL COPY

PROMISSORY NOTE

Amalgamated Bank of Chicago f/k/a Amalgamated Trust and Savings Bank, not personally but solely as Trustee under a Trust Agreement dated May 1, 1970 and known as Trust Number 2167 ("Mortgagor") having an address at One West Monroe, Chicago, Illinois 60603, and Lunt Realty Associates, an Illinois general partnership ("Beneficiary") having an address of c/o Lunt Realty Associates, 819 South Wabash Avenue, Suite 808, Chicago, Illinois 60605 (Mortgagor and Beneficiary are referred to herein as "Borrower"), FOR VALUE RECEIVED, promises unconditionally to pay to the order of Allmerica Financial Life Insurance and Annuity Company, a Delaware corporation, or its successors or assigns ("Lender"), c/o Allmerica Asset Management, Inc. - Mortgages, at 440 Lincoln Street, Worcester, Massachusetts 01653, or such other place as the holder hereof may from time to time designate in writing, the principal sum of Six Million Two Hundred Thousand Dollars (\$6,200,000) with interest payable as, and in accordance with the terms, set forth herein.

1. DEFINITIONS

1.1. Definitions.

As used herein, the following terms shall have the following meanings:

Default Rate: The greater of (a) the Interest Rate plus five percent (5%) per annum or (b) the Prime Rate plus five percent (5%) per annum, determined as of the applicable date of default.

Disbursement Date: The date on which proceeds of the Loan are disbursed by Lender.

Interest: As defined in Section 2.1.

Interest Rate: An annual interest rate equal to Eight and seven-eighths percent (8.875 %), compounding monthly.

Prime Rate: The rate of interest reported in The Wall Street Journal from time to time as the "prime rate". If The Wall Street Journal ceases to report a prime rate, the term "Prime Rate" shall mean a substitute and comparable rate selected by Lender.

Stated Maturity: December 1, 2002.

Yield Maintenance Amount: The amount, not less than zero, equal to the sum of (a) the present value as of the date of prepayment of all remaining scheduled payments of principal and/or interest hereunder, including, without limitation, principal and interest due at the Stated Maturity, calculated by discounting such payments on a monthly basis at a rate equal to one-twelfth of

97647872

UNOFFICIAL COPY

the Treasury Yield (as defined below) less (b) the amount of principal then outstanding. The Treasury Yield shall equal the yield on the publicly traded United States Treasury Security due on the Maturity Date (as such yield is reported in The Wall Street Journal or other similar business publication of general circulation selected by Lender if The Wall Street Journal is no longer available or no longer publishes such information), plus fifty (50) basis points, on a date selected by lender during the first week ending not less than two full weeks before the date of prepayment. If there is more than one Treasury Security due on the Stated Maturity, or if there is no Treasury Security which is due on the Stated Maturity, the applicable Treasury Security for the purposes of this sentence shall be the one selected by Lender from those due on the Stated Maturity, or if there are none due on the Stated Maturity, from those having a maturity closest in time prior to and those having a maturity closest in time after the Stated Maturity.

Make Whole Amount: An amount equal to the greater of (a) the Yield Maintenance Amount or (b) one percent (1%) of the outstanding principal balance under this Note immediately prior to such prepayment. The Make Whole Amount is not a penalty but is compensation to Lender for the loss of its investment return over the period remaining until the Stated Maturity, and for such costs and expenses as processing costs, administrative expenses, opportunity costs, brokerage expenses, legal fees and transactional costs associated with reinvesting the amount prepaid.

Mortgage: The Mortgage, Security Agreement and Fixture Filing or Deed of Trust, Security Agreement and Fixture Filing of even date herewith granted by Mortgagor to Lender.

1.2. Other Defined Terms.

1.3. All other capitalized terms not otherwise defined herein shall have the meanings given to them in the Mortgage.

2. PAYMENTS

2.1. Scheduled Monthly Payments.

This Note shall be effective as of the Disbursement Date, provided that it has been accepted in writing by Lender, and shall bear interest on the unpaid principal balance hereof from time to time at the Interest Rate (the "Interest"). Commencing on October 1, 1997, Borrower shall pay to Lender the amount of [\$55,285.55] on the first day of each calendar month during the term of this Note (the "Scheduled Monthly Payments"). All payments made under this Note shall be applied first to Interest currently due, then to principal. Interest shall be computed on the basis of

97647872

UNOFFICIAL COPY

twelve 30-day months and the actual number of days for which interest is being paid in any partial month, based upon the number of actual days in such month.

2.2. Maturity.

The then outstanding principal balance hereunder together with all accrued and unpaid interest and all other charges outstanding hereunder or under any of the Loan Documents shall be due and payable at the Stated Maturity, or earlier upon acceleration following an Event of Default or otherwise.

2.3. Form of Payment.

Payments hereunder shall be made in lawful money of the United States of America by wire transfer of funds, payable to Lender or to such agent for Lender as Lender may from time to time direct. Until directed otherwise in writing by Lender, all payments under this Note shall be made by Electronic Fund Transfer debit entries to the Borrower's account at an Automated Clearing House ("ACH") member bank. Each payment shall be initiated by the holder through the ACH network for settlement on the respective due date. Prior to each payment due date, the Borrower shall deposit or maintain sufficient funds in its account to cover each debit entry. Monthly payments for such reserves for impositions and Insurance Premiums as required by the Mortgage shall be paid in a like manner.

3. PREPAYMENT

3.1. Permitted Prepayments.

Subject to Borrower's strict compliance with the next succeeding paragraph, Borrower may prepay the outstanding principal balance hereunder in whole, but not in part, together with all accrued and unpaid interest and all other charges due hereunder at any time, provide that such prepayment is made together with payment to Lender, in addition to all other amounts due, of the Make Whole Amount. Borrower shall give Lender, and it shall be a condition precedent to Borrower's right to make a prepayment, at least thirty (30) days' prior written notice of the date on which any prepayment pursuant to this Section 3.1 will occur, which notice may be revoked no later than fifteen days prior to the date specified in such notice as the date for repayment; if not so timely revoked, such notice shall be irrevocable, and the entire Indebtedness shall be due on the date specified in such notice.

3.2. Prepayment of Insurance and Condemnation Proceeds.

The application of insurance proceeds, condemnation payments and Lease Modification and Termination Payments to the Indebtedness shall not require the payment of any Make Whole Amount.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

3.3. Other Prepayments

Borrower may not make any prepayment of principal, in whole or in part, before Stated Maturity, except as specified in Sections 3.1 and 3.2. If the Indebtedness is prepaid under circumstances other than as set forth in Sections 3.1 and 3.2, including, without limitation, after acceleration after an Event of Default, Borrower shall pay to Lender, in addition to all other amounts due, the Make Whole Amount.

3.4. Acknowledgment of Agreement Regarding Make Whole Amounts

BORROWER WAIVES ANY RIGHTS IT MAY HAVE UNDER APPLICABLE STATE LAWS AS THEY RELATE TO ANY PREPAYMENT RESTRICTIONS CONTAINED IN THIS NOTE AND ACKNOWLEDGES THAT LENDER HAS MADE THE LOAN EVIDENCED BY THIS NOTE IN RELIANCE ON THE AGREEMENTS SET FORTH IN THIS ARTICLE III AND IN RELIANCE ON SUCH WAIVER.

4. LATE CHARGE

4.1. Late Charge

In the event any payment due hereunder or under any of the other Loan Documents is not paid when due (without regard to any applicable notice or cure period), Borrower shall immediately, without notice, pay Lender a late charge of five percent (5%) of the amount of the payment due.

5. EVENTS OF DEFAULT, ACCELERATION

5.1. Events of Default

An "Event of Default" shall occur hereunder if (i) Borrower shall fail to pay any amount due hereunder, in full, on the Stated Maturity or when the Indebtedness shall otherwise become due and payable in full; (ii) Borrower shall fail to pay any other amount due hereunder when due, or (iii) an Event of Default (as defined in the Mortgage or any of the other Loan Documents) shall occur under the Mortgage or any of the other Loan Documents.

5.2. Acceleration After Event of Default

At any time after the occurrence of an Event of Default which has not been fully and completely cured, Lender may, without notice, demand, presentment, notice of nonpayment or nonperformance, protest, notice of protest, notice of intent to accelerate, notice of acceleration, or any other notice or any other action, all of which are hereby waived by Borrower on behalf of itself and all other parties obligated in any manner whatsoever on the Indebtedness, declare the entire unpaid balance of the Indebtedness and the applicable Make Whole Amount immediately due and payable.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

5.3. Default Interest.

Notwithstanding anything to the contrary contained herein, if at any time or from time to time any amount of interest or principal payable hereunder (including the entire principal balance hereunder, when applicable) is not paid when due, Borrower shall pay interest at the Default Rate to Lender hereunder on such amount from the date such amount is due. Such interest shall be payable with the payment of such overdue amount, and otherwise shall be compounded monthly on the first day of each calendar month until paid in full.

5.4. Lender's Remedies; Waiver by Lender.

The remedies of Lender as provided herein or in the Loan Documents or at law or in equity shall be cumulative and concurrent, and may be pursued singly, successively, or together in the sole and absolute discretion of Lender, and may be exercised as often as occasion therefor shall occur. The failure or delay at any time to exercise any right or remedy shall not constitute a waiver of the right to exercise the right or remedy at any other time.

6. MISCELLANEOUS

6.1. Security for This Note

Borrower's obligations under this Note are secured by the Mortgage, the Assignment of Leases and Rents, the Indemnification Agreement and such other security agreements, assignments, pledges, guaranties and indemnities as may be given from time to time to Lender to secure the Indebtedness (the "Security Instruments").

6.2. Waiver of Defenses by Borrower.

Notice, demand, presentment, notice of nonpayment or nonperformance, protest, notice of protest, notice of intent to accelerate, notice of acceleration or any other notice or any other action, and all other suretyship defenses to payment generally are hereby waived by Borrower. No extension or indulgence or release of collateral granted from time to time shall be construed as a novation of this Note or as a reinstatement of the Indebtedness or as a waiver of the rights of Lender herein.

6.3. Exculpation.

Except as provided in the Indemnification Agreement, or in any other separate guaranty, indemnity or agreement, and except as set forth below, neither Borrower, nor any partner of Borrower, nor any partner, officer, director, shareholder, legal representative, heir or estate of any such partner shall have any personal liability for (i) the payment of any sum of money which is or may be payable hereunder or under the Loan Documents, including, but not limited to, the repayment of the Indebtedness, or (ii) the performance or discharge of any covenants or undertakings of Borrower hereunder or under any of the Loan Documents, and, in the enforcement of any of its rights hereunder, Lender shall proceed solely against any collateral given as security

UNOFFICIAL COPY

for payment of this Note or for payment or performance under the Loan Documents and shall not seek any deficiency judgment.

Notwithstanding the foregoing, the Borrower agrees, for itself and its general partners, as general partners and personally and individually, that Borrower and its general partners shall be personally liable for, on a joint and several basis, and shall indemnify, defend and hold harmless Lender from and against, any and all liabilities, claims, losses, deficiencies, judgments, damages, costs and expenses of every kind and nature arising out of or in connection with any of the following:

(a) The commission of fraud by Borrower or any Constituent Party, or any material misrepresentation made to Lender by or on behalf of Borrower during or prior to the time that the Indebtedness remains outstanding, including, without limitation, in connection with the application for the Loan, or any modification, amendment or extension thereof, or in the Borrower's Closing Certificate or any of the other Loan Documents.

(b) Breach of any covenant, agreement or indemnity of Borrower set forth in the *Environmental Compliance and Indemnification Agreement*.

(c) Acceptance of Rents in advance, including Lease Modification and Termination Payments or failure to transfer any security deposits to Lender immediately upon an Event of Default.

(e) Application of Rents and any other gross revenues from the Mortgaged Property received or collected at any time subsequent to an Event of Default to anything other than Impositions, payments due under this Note, and reasonable operating expenses of the Mortgaged Property (excluding in all events (i) payments made, for services rendered or otherwise, to Borrower, any Constituent Party, any Guarantor, any Indemnitor or any Affiliate of the foregoing in excess of payment which would have been made to third parties for such services on the basis of bona fide arm's lengths contracts at prevailing market rates, (ii) expenses of the Borrower, any Constituent Party, any Guarantor, any Indemnitor or any Affiliate of the foregoing which are not expenses of the Mortgaged Property, and (iii) legal, accounting or other fees associated with any modifications to the Loan Documents or any enforcement of the Loan Documents).

(f) Failure to pay Impositions, or to maintain insurance, or to fund any reserve fund required therefor pursuant to the Loan Documents, or the misapplication of proceeds of insurance or condemnation in violation of the provisions of the Mortgage.

97647872

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

All of the foregoing personal liability and indemnification obligations shall survive the foreclosure of the Mortgage or acceptance of a deed in lieu thereof, and the repayment of the Indebtedness, the satisfaction of all other Obligations and the discharge and release of the Loan Documents.

Nothing contained in this Section shall impair the validity of the indebtedness evidenced by this Note or in any way affect or impair the lien of the Security Instruments or the right of the holder of this Note and the Security Instruments to foreclose on the Security Instruments in accordance with their provisions and to exercise its other rights upon an Event of Default.

6.4. Notices

All notices or other communications required or permitted to be given pursuant to this Note shall be in writing and shall be considered as properly given (i) if mailed by first class United States mail, postage prepaid, registered or certified with return receipt requested, (ii) by delivering same in person to the intended addressee, or (iii) by delivery to U.S. Express Mail, or to Federal Express or another independent, nationally or locally recognized, third party commercial delivery service for same day or next day delivery. Notices shall be effective upon the earlier to occur of (a) the date received, or (b) one business day after delivery to Federal Express or such other delivery service, postage prepaid. For purposes of notice, the addresses of the parties shall be as set forth in this Note, provided, however, that either party shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of ten (10) days' notice to the other party in the manner set forth herein. Borrower shall also give written notice to Lender in the manner set forth herein of any change of address of any Constituent Party or any Guarantor or Indemnitor at least ten (10) days prior to the effective date of such change of address. Lender shall endeavor to send a copy of all notices addressed to Borrower to the Julius Lopin Revocable Trust, 4001 West Devon Avenue, Suite 404, Chicago, Illinois 60646 and to David A. Saunders, Seyfarth, Shaw, Fairweather & Geraldson, 55 East Monroe Street, Suite 4200, Chicago, Illinois 60603, but failure of such persons to receive such notices shall neither invalidate nor impair the effectiveness of any such notice.

6.5. Applicable Law, Jurisdiction

This Note shall be governed by and construed according to the laws of the state in which the Mortgaged Property is located. Any action or proceeding in connection with this Note or any of the other Loan Documents shall be brought in a court of record of the State of Illinois or in the United States District Court for the Northern District of Illinois, the Borrower hereby consenting to the jurisdiction thereof over its person. Service of process may be made upon the Borrower by mailing a copy of the summons and any complaint to the Borrower, by certified or registered mail, return receipt requested, at the address to be used for the giving of notice to the Borrower under this Agreement. In any action or proceeding relating to this Note or any of the other Loan Documents, the Borrower hereby waives any claim that any of the foregoing courts is an inconvenient forum.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

6.6. Usury.

In the event the interest (including without limitation, at the Default Rate) or other payments required to be made under this Note or any of the other Loan Documents or otherwise, shall at any time exceed the limit permitted by applicable Laws (including without limitation, usury laws) (the "Legal Limits"), all such sums paid by Borrower or any Guarantor(s) or Indemnitor(s) for the period in question that exceed the Legal Limits, automatically and without further documentation or action by Borrower, any Guarantor(s) or Indemnitor(s) or Lender, shall be applied to the outstanding principal balance of the Note and to all accrued interest thereon that is permitted under applicable law, as a prepayment without obligation to pay any Make Whole Amount. If and to the extent that such application of any such excess sums to principal is also prohibited by applicable law, or if there would remain a portion of the excess sum after it is applied to principal, such excess sum or portion thereof shall be returned to Borrower. The provisions of this paragraph shall govern, notwithstanding anything to the contrary in any of the Loan Documents

6.7. Headings for Convenience Only.

The headings of the Articles, Sections and Subsections hereof are inserted for convenience of reference only and shall in no way alter, modify, or define, or be used in construing the text of such Articles, Sections or Subsections.

6.8. Entire Agreement, Amendments in Writing

This Note and the other loan documents embody the final, entire agreement among the parties hereto and supersede any and all prior commitments, agreements, representations, and understandings, whether written or oral, relating to the subject matter hereof and thereof and may not be contradicted or varied by evidence of prior, contemporaneous, or subsequent oral agreements or discussions of the parties hereto. There are no oral agreements among the parties hereto. The provisions of this Note and the Loan Documents may be amended or waived only by an instrument in writing signed by the Borrower and Lender.

6.9. Waiver of Right to Trial by Jury

BORROWER AND LENDER HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT, PROCEEDING, OR COUNTERCLAIM THAT RELATES TO OR ARISES OUT OF ANY OF THE LOAN DOCUMENTS OR THE ACTS OR FAILURE TO ACT OF OR BY LENDER IN THE ENFORCEMENT OF ANY OF THE TERMS OR PROVISIONS OF THIS NOTE OR THE OTHER LOAN DOCUMENTS OR BY BORROWER IN THE PERFORMANCE OF ANY OF THE TERMS OR PROVISIONS OF THIS NOTE OR THE OTHER LOAN DOCUMENTS.

97647872

UNOFFICIAL COPY

6.10. Lender's Costs of Enforcement.

If, and as often as, this Note is referred to an attorney for the collection of any sum payable hereunder or under any of the Loan Documents, Borrower agrees to pay to Lender all costs incurred in connection therewith including reasonable attorneys' fees, provided that Lender is the prevailing party in such action.

6.11. Successors.

As used herein, the terms "Borrower" and "Lender" shall be deemed to include their respective successors and assigns whether by voluntary action of the parties or by operation of law. All of the rights, privileges and obligations hereof shall inure to the benefit of and bind such successors and assigns. The foregoing reference to Borrower's successors is not intended, however, to derogate from the provisions of Section 4.21 of the Mortgage (Transfers).

6.12. Refinance of Existing Loan.

The loan represented by this Note constitutes a refinance of a loan previously made by Lender to Borrower (the "Existing Loan"). The Existing Loan shall not be deemed repaid, nor shall this Note be deemed effective, until this Note and the balance of the Loan Documents have been accepted in writing by Lender.

6.13. Mortgagor's Exculpatory.

Amalgamated Trust and Savings Bank is a party to this instrument, not in its individual capacity but as trustee under a Trust Agreement dated May 1, 1970 and known as Trust No. 2167. Insofar as the liability of Mortgagor is concerned, this instrument is enforceable only against, and any claims hereon are payable only out of, any trust property which may be held thereunder and any rents and proceeds therefrom, but this clause shall not affect Lender's remedies under any of the other Security Instruments. Any and all liability of Amalgamated Trust and Savings Bank in its individual capacity is hereby expressly waived by Lender and its successors and assigns.

97647872

UNOFFICIAL COPY

IN WITNESS WHEREOF, the undersigned has caused this Note to be duly executed, sealed and delivered as of the date first set forth above.

MORTGAGOR:

Amalgamated Bank of Chicago, not personally but solely as Trustee under a Trust Agreement dated May 1, 1970 and known as Trust Number 2167

ATTEST:

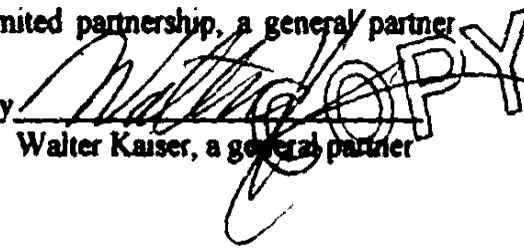
Secretary

By: _____
Name: _____
Title: _____
Hereunto Duly Authorized

BENEFICIARY::

LUNT REALTY ASSOCIATES, an Illinois general partnership

By: Kaiser Investments, Ltd., an Illinois limited partnership, a general partner

By: 
Walter Kaiser, a general partner

UNOFFICIAL COPY

Property of Cook County Clerk's Office

RECORDING DEPT-01 \$139.50
TRAN 2281 09/03/97 15:27:00
TB # -97-647872
COOK COUNTY RECORDER

97647872