

✓ This instrument was prepared by
and,
✓ after recording, return to
Pamela L. McLean
MELTZER, PURTILL &
STELLE
1515 East Woodfield Rd.
Suite 250
Schaumburg, IL
60173-5431

Property of Cook County Clerk's Office
② 7682577 / 970519843

Permanent Real Estate
Tax Index No.:
✓ See Exhibit A attached
2900-14 North Mildred Street
Chicago Cook County, IL.

24

MORTGAGE AND SECURITY AGREEMENT

Re: 2900-14 NORTH MILDRED STREET

THIS INDENTURE is made as of November 6, 1997 by 2900-14 NORTH MILDRED LIMITED PARTNERSHIP, an Illinois limited partnership ("Mortgagor") to LASALLE BANK NATIONAL ASSOCIATION, a national bank ("Mortgagee");

RECITALS

Mortgagor is justly indebted to Mortgagee in the principal sum of Three Million Two Hundred Forty Thousand and no/100ths Dollars (\$3,240,000.00) ("Loan") evidenced by a certain Mortgage Note in the principal sum of Three Million Two Hundred Forty Thousand and no/100ths Dollars (\$3,240,000.00) (the "Note") of even date herewith made by Mortgagor and delivered to Mortgagee, whereby Mortgagor promises to pay the said principal sum and interest in the manner and at the rates as provided therein. The unpaid principal amount and all accrued and unpaid interest due under the Note, if not sooner paid, shall be due on that date which is thirty-six (36) months from the date of the disbursement of the proceeds of the Loan ("Maturity Date"). All such payments on account of the indebtedness evidenced by the Note shall be first applied to interest on the unpaid principal balance and the remainder to principal and all of said principal and interest being made payable at such place as the holder of the Note may from time-to-time in writing appoint, and in the absence of such appointment, then at the office of Mortgagee, at the address indicated above or at such other address as Mortgagee may from time-to-time designate in writing.

BOX 323-071

ACCORDINGLY, Mortgagor, to secure: (i) the payment of said principal sum of money and all interest, late charges and other indebtedness evidenced by the Note and by any extensions, renewals or refinancings thereof; (ii) the performance and observance of the covenants, terms, conditions and agreements contained in the Note, this Mortgage and the Loan Documents (as hereinafter defined); and (iii) the reimbursement of Mortgagee for any and all sums expended or advanced by Mortgagee pursuant to any term or provision of or constituting additional indebtedness under or secured by this Mortgage or any of the Loan Documents, with interest thereon as provided herein or therein; and also in consideration of the sum of TEN DOLLARS (\$10.00) in hand paid, the receipt whereof is hereby acknowledged, does by these presents MORTGAGE, GRANT, ASSIGN, REMISE, RELEASE, WARRANT, AND CONVEY unto Mortgagee, its successors and assigns, the real estate and all of its estate, right, title and interest therein situate, legally described in Exhibit A attached hereto and made a part hereof, which together with the property hereinafter described, is referred to herein as the "Premises";

TOGETHER with all buildings and improvements now or hereafter constructed upon or erected upon or located on the real estate legally described in Exhibit A attached hereto, all tenements, easements, rights-of-way and rights used as a means of access thereto, all fixtures and appurtenances thereto now or hereafter belonging or pertaining to the real estate legally described in Exhibit A attached hereto, and all rents, issues, royalties, income, proceeds, profits and other benefits thereof, and any after-acquired title, franchise, or license and the reversions or remainders thereof, for so long and during all such times as Mortgagor may be entitled thereto (which are pledged primarily and on a parity with said real estate and not secondarily), and all shades, awnings, venetian blinds, screens, screen doors, storm doors and windows, stoves and ranges, refrigerators, curtain and drapery fixtures, partitions, attached floor covering, now or hereafter therein or thereon, and all fixtures, apparatus, equipment or articles now or hereafter therein or thereon used to supply heat, gas, air conditioning, water, light, power, sprinkler protection, waste removal, refrigeration (whether single units or centrally controlled), and ventilation, including (without restricting the foregoing): all fixtures, apparatus, equipment and articles, it being understood that the enumeration of any specific articles of property shall in no way exclude or be held to exclude any items of property not specifically mentioned. All of the land, estate and property hereinabove described, real, personal and mixed, whether affixed or annexed or not (except where otherwise hereinabove specified) and all rights hereby conveyed and mortgaged are intended so to be as a unit and are hereby understood, agreed and declared, to the maximum extent permitted by law, to form a part and parcel of the real estate and to be appropriated to the use of the real estate, and shall be for the purposes of this Mortgage deemed to be real estate and conveyed and mortgaged hereby; provided, however, as to any of the property aforesaid which does not so form a part and parcel of the real estate or does not constitute a "fixture" (as defined in the Uniform Commercial Code of Illinois (the "Code"), this Mortgage is hereby deemed to also be a Security Agreement under the Code for purposes of granting a security interest in such property, which Mortgagor hereby grants to Mortgagee, as Secured Party (as defined in the Code), as more particularly provided in Paragraph 31 of this Mortgage.

TO HAVE AND TO HOLD the Premises unto the said Mortgagee, its successors and assigns, forever, for the purposes and uses herein set forth, together with all right to retain possession of the Premises after any Event of Default (as hereinafter defined).

UNOFFICIAL COPY

Property of Cook County Clerk's Office

IT IS FURTHER UNDERSTOOD AND AGREED THAT:

1. Title.

Mortgagor represents and covenants that (a) Mortgagor is the holder of the fee simple title to the Premises, free and clear of all liens and encumbrances, except such liens and encumbrances as shall have been expressly approved in writing by Mortgagee, and (b) Mortgagor has legal power and authority to mortgage and convey the Premises.

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

Mortgagor shall (a) promptly repair, restore or rebuild any buildings or improvements now or hereafter on the Premises which may become damaged or be destroyed; (b) keep the Premises in good condition and repair, without waste, and free from mechanics' liens or other liens or claims for lien, except that Mortgagor shall have the right to contest by appropriate proceedings diligently prosecuted the validity or amount of any such lien if and only if Mortgagor shall within fifteen (15) days after notice of the filing thereof (1) place a bond with Mortgagee in an amount, form, content and issued by a surety reasonably acceptable to Mortgagee for the payment of any such lien or (2) cause the title company which has issued the loan policy of title insurance to Mortgagee insuring the lien of this Mortgage to issue an endorsement thereto insuring against loss or damage on account of any such lien; (c) immediately pay when due any indebtedness which may be secured by a lien or charge on the Premises superior or inferior to or at parity with the lien hereof (no such superior, inferior or parity lien to be permitted hereunder), and upon request exhibit satisfactory evidence of the discharge of any such lien to Mortgagee; (d) complete within a reasonable time any buildings or any other improvements now or at any time in process of construction upon the Premises; (e) materially comply with all requirements of law, municipal ordinances and restrictions of record with respect to the Premises and the use and development thereof, including without limitation, those relating to building, zoning, environmental protection, health, fire and safety; (f) suffer or permit no change in the general nature of the occupancy of the Premises, without the prior written consent of Mortgagee; (g) initiate or acquiesce in no zoning reclassification without the prior written consent of Mortgagee; (h) pay each item of indebtedness secured by this Mortgage when due (subject to any applicable cure periods) according to the terms hereof or of the Note; and (i) duly perform and observe all of the covenants, terms, provisions and agreements herein, in the Note or in the Loan Documents on the part of Mortgagor to be performed and observed. As used in this Paragraph and elsewhere in this Mortgage, the term "indebtedness" shall mean and include the principal sum evidenced by the Note, together with all interest thereon and all other amounts payable to Mortgagee thereunder, and all other sums at any time secured by this Mortgage.

3. Payment of Taxes and Assessments.

Mortgagor shall pay before any penalty or interest attaches all general taxes, special taxes, special assessments, water charges, sewer service charges, and all other liens or charges levied or assessed against the Premises, or any interest therein, of any nature whatsoever when due, and shall furnish to Mortgagee duplicate receipts of payment therefor. If any special assessment is permitted by applicable law to be paid in installments, Mortgagor shall have the right to pay such assessment in installments, so long as all such installments are paid prior to the due date thereof. Notwithstanding anything contained herein to the contrary, Mortgagor shall have the right to protest any taxes assessed against the Premises, so long as such protest is conducted in good faith by appropriate legal proceedings

UNOFFICIAL COPY

Property of Cook County Clerk's Office

diligently prosecuted and Mortgagor shall furnish to the title insurer such security or indemnity as said insurer requires to induce it to issue an endorsement, in form and substance acceptable to Mortgagee, insuring over any exception created by such protest.

4. Tax Deposits.

During the term of the Loan, Mortgagor covenants and agrees to deposit with Mortgagee with each monthly installment until the indebtedness secured by this Mortgage is fully paid, a sum equal to one-twelfth (1/12th) of the estimated improved real estate taxes and assessments (general and special) on the Premises, as reasonably determined by Mortgagee. Such deposit is to be held in an interest bearing money market or passbook account, whichever is higher, at Mortgagee and is to be used for the payment of taxes and assessments (general and special) on the Premises, which shall be maintained on a when next-due and payable basis. Mortgagee shall have the ability to readjust the monthly escrow payment from time to time in order to ensure sufficient funds will be available to cover the upcoming tax bills.

5. [Intentionally Omitted.]

6. Insurance

Mortgagor shall at all times keep all buildings, improvements, fixtures and articles of personal property now or hereafter situated on the Premises insured against loss or damage by fire and such other hazards as may reasonably be required by Mortgagee, including without limitation: (a) all-risk fire and extended coverage insurance, with vandalism and malicious mischief endorsements, for the full replacement value of the Premises, with agreed upon amount and inflation guard endorsements; (b) rent and rental value or business loss insurance for the same perils described in (a) above payable at the rate per month and for the period specified from time to time by Mortgagee; (c) broad form boiler and sprinkler damage insurance in an amount reasonably satisfactory to Mortgagee, if and so long as the Premises shall contain a boiler and sprinkler system, respectively; (d) if the Premises are located in a flood hazard district, flood insurance in the maximum amount obtainable up to the amount of the indebtedness hereby secured; and (e) such other insurance as Mortgagee may from time to time reasonably require and as specified in the Loan Agreement. Mortgagee also shall at all times maintain comprehensive public liability, property damage and workmens' compensation insurance covering the Premises and any employees thereof, with such limits for personal injury, death and property damage as Mortgagee may reasonably require. All policies of insurance to be furnished hereunder shall be in forms, companies, amounts and deductibles reasonably satisfactory to Mortgagee, with mortgagee clauses attached to all policies in favor of and in form satisfactory to Mortgagee, including a provision requiring that the coverage evidenced thereby shall not be terminated or materially modified without thirty (30) days' prior written notice to Mortgagee and shall contain endorsements that no act or negligence of the insured or any occupant and no occupancy or use of the Premises for purposes more hazardous than permitted by the terms of the policies will affect the validity or enforceability of such policies as against Mortgagee. Mortgagor shall deliver all policies, including additional and renewal policies, to Mortgagee, and, in the case of insurance about to expire, shall deliver renewal policies not less than thirty (30) days prior to their respective dates of expiration.

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

such separate insurance is taken out and promptly shall deliver to Mortgagee the policy or policies of such insurance.

In the event of loss Mortgagor shall give immediate notice by mail to Mortgagee, who may make proof of loss if not made promptly by Mortgagor, and each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Mortgagee instead of to Mortgagor and Mortgagee jointly. Any insurance proceeds so received by Mortgagee, or any part thereof, shall be applied by Mortgagee, after the payment of all of Mortgagee's expenses, including costs and attorneys' fees, to the restoration or repair of the property damaged as provided in Paragraph 19 hereof. Notwithstanding the foregoing, Mortgagor shall not pay a Prepayment Premium (as defined in the Note) if such insurance proceeds are received by Mortgagee. In the event of foreclosure of this Mortgage, all right, title and interest of Mortgagor in and to any insurance policies then in force shall pass to the purchaser at the foreclosure sale. Mortgagor shall furnish Mortgagee, without cost to Mortgagee, at the request of Mortgagee, from time to time, evidence of the replacement value of the Premises.

7. Condemnation.

If all or any part of the Premises are damaged, taken or acquired, either temporarily or permanently, in any condemnation proceeding, or by exercise of the right of eminent domain, the amount of any award or other payment for such taking or damages made in consideration thereof, to the extent of the full amount of the remaining unpaid indebtedness secured by this instrument, is hereby assigned to Mortgagee, who is empowered to collect and receive the same and to give proper receipts therefor in the name of Mortgagor and the same shall be paid forthwith to Mortgagor, who shall release any such award or monies so received or apply the same in whole or in part, after the payment of all of its expenses, including costs and attorneys' fees, to the restoration or repair of the property damaged as provided in Paragraph 19 hereof, if in the reasonable judgment of Mortgagee the property can be restored or repaired to the condition existing immediately prior to the taking. Furthermore, in the event such award or monies so received shall exceed the cost of restoration or repair of the property and expenses of Mortgagee as aforesaid, then such excess monies shall be applied on account of the unpaid principal balance of the Note, irrespective of whether such principal balance is then due and payable. Any application to the unpaid principal balance of the Note pursuant to this Paragraph 7 shall not extend the due date or reduce the amount of the principal and interest installments required to be paid under the Note. No Prepayment Premium shall be due and payable in the event of any such payment due to condemnation, as stated herein.

8. Observance of Lease Assignment.

As additional security for the payment of the Note and for the faithful performance of the terms and conditions contained herein, Mortgagor, as lessor, have assigned to Mortgagee the entire lessor's right, title and interest in and to all leases and subleases (including all extensions and renewals thereof) which now or hereafter affect all or any portion of the Premises and in and to all rents, issues, income and profits of or from all or any portion of the Premises pursuant to the Assignment of Rents and Leases of even date herewith.

Mortgagor shall not, without Mortgagee's prior written consent, (a) execute an assignment or pledge of any rents and/or any leases affecting all or any portion of the Premises; or (b) accept any

prepayment of any installment of any rents more than thirty (30) days before the due date of such installment, other than security and other deposits.

Mortgagor at its sole cost and expense shall (i) at all times promptly and faithfully abide by, discharge and perform all of the covenants, conditions and agreements contained in all leases affecting all or any portion of the Premises, on the part of the lessor thereunder to be kept and performed, (ii) use its best efforts to enforce or secure the performance of all of the covenants, conditions and agreements of such leases on the part of the lessees to be kept and performed; (iii) appear in and defend any action or proceeding arising under, growing out of or in any manner connected with such leases or the obligations, duties or liabilities of the lessor or of the lessees thereunder; (iv) as additional security for the payment of the Note and for the faithful performance of the terms and conditions contained herein, transfer and assign to Mortgagee any lease or leases of the Premises heretofore or hereafter entered into, and make, execute and deliver to Mortgagee upon demand, any and all instruments required to effectuate said assignment; (v) give written notice to Mortgagee within ten (10) days of the occurrence of any material default under any lease affecting all or any portion of the Premises; and (vi) exercise within five (5) days of any demand therefor by Mortgagee the right to, if any, request from the lessee under any lease affecting all or any portion of the Premises a certificate with respect to the status thereof.

Nothing in this Mortgage or in any other documents relating to the loan secured hereby shall be construed to obligate Mortgagee, expressly or by implication, to perform any of the covenants of Mortgagor as lessor under any of the leases assigned to Mortgagee or to pay any sum of money or damages therein provided to be paid by the lessor, each and all of which covenants and payments Mortgagor agrees to perform and pay.

Mortgagee shall have the option to declare this Mortgage (after the expiration of any notice, grace or cure period expressly provided in any of the Loan Documents) in default because of a material default of the lessor in any lease affecting all or any portion of the Premises, whether or not such default is cured by Mortgagee pursuant to the right granted herein. It is covenanted and agreed that a default remaining uncured after the expiration of any applicable cure periods expressly provided for under the Assignment of Rents and Leases referred to in the first grammatical paragraph of this Paragraph 8 shall constitute an Event of Default hereunder on account of which the whole of the indebtedness secured hereby shall at once, at the option of Mortgagee, become immediately due and payable without notice to Mortgagor.

9. Effect of Extensions of Time.

If the payment of said indebtedness or any part thereof be extended or varied or if any part of any security for the payment of the indebtedness be released, all persons now or at any time hereafter liable therefor, or interested in the Premises or having an interest in Mortgagor or in the beneficiary of Mortgagor, shall be held to assent to such extension, variation or release, and their liability and the lien and all provisions hereof shall continue in full force, the right of recourse (if and to the extent it exists) against all such persons being expressly reserved by Mortgagee, notwithstanding such extension, variation or release.

10. Mortgagee's Performance of Defaulted Acts and Expenses Incurred by Mortgagee.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

If an Event of Default exists, and is continuing, Mortgagee may, but need not, make any payment or perform any act herein required of Mortgagor in any form and manner deemed expedient, and may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting the Premises or consent to any tax or assessment or cure any default of Mortgagor in any lease of the Premises. If an Event of Default exists, and is continuing, Mortgagee may, but shall not be required to, complete construction, furnishing and equipping of any buildings or other improvements now or at any time hereafter on the Premises, and rent, operate and manage the Premises and such buildings and improvements and pay operating costs and expenses, including management fees, of every kind and nature in connection therewith, so that the Premises and such buildings and improvements shall be operational and usable for their intended purposes. All monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including attorneys' fees, and any other monies advanced by Mortgagee or to protect the Premises or the lien hereof, shall be so much additional indebtedness secured hereby, and shall become immediately due and payable without notice and with interest thereon at an annual rate ("Default Rate") equal to four percent (4%) plus the applicable Loan Rate (as defined in the Note) then in effect under the Note. In addition to the foregoing, any costs, expenses and fees, including attorneys' fees, incurred by Mortgagee in connection with (a) sustaining the lien of this Mortgage or its priority, (b) protecting and enforcing any of Mortgagee's rights hereunder, (c) recovering any indebtedness secured hereby, (d) any litigation or proceedings affecting the Note, this Mortgage, the Premises or any guarantor or co-maker of the Note or this Mortgage, including without limitation, bankruptcy and probate proceedings, or (e) preparing for the commencement, defense or participation in any threatened litigation or proceedings, shall be so much additional indebtedness secured hereby, and shall become immediately due and payable without notice and with interest thereon at the Default Rate. The interest accruing under this Paragraph 10 shall be immediately due and payable by Mortgagor to Mortgagee, and shall be additional indebtedness evidenced by the Note and secured by this Mortgage. Inaction of Mortgagee shall never be considered as a waiver of any right accruing to it on account of any default on the part of Mortgagor. Should the proceeds of the Note or any part thereof, or any amount paid out or advanced by Mortgagee hereunder, or pursuant to any agreement executed by Mortgagor in connection with the loan evidenced by the Note, be used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any lien or encumbrance upon the Premises or any part thereof, then as additional security hereunder, Mortgagee shall be subrogated to any and all rights, equal or superior titles, liens and equities owned or claimed by any owner or holder of said outstanding liens, charges and indebtedness, however remote, regardless of whether said liens, charges and indebtedness are acquired by assignment or have been released of record by the holder thereof upon payment. Notwithstanding anything contained herein to the contrary, in no event shall the indebtedness secured by this Mortgage exceed an amount equal to Twenty Million and No/100 Dollars (\$20,000,000.00).

11. Acceleration of Indebtedness in Event of Default.

Each of the following shall constitute an "Event of Default" for purposes of this Mortgage:

(a) Mortgagor fails to pay (i) within fifteen (15) days after the date when due, any installment of principal or interest payable pursuant to the Note, or (ii) within fifteen (15) days after notice from Lender, any other amount payable pursuant to the Note, this Mortgage or any of the other Loan Documents; or

UNOFFICIAL COPY

Property of Cook County Clerk's Office

(b) There shall exist and be continuing an "Event of Default" under the Note or any of the Loan Documents.

If an Event of Default occurs, Mortgagee may, at its option, declare the whole of the indebtedness hereby secured to be immediately due and payable without notice to Mortgagor, with interest thereon from the date of such Event of Default at the Default Rate. If while any insurance proceeds or condemnation awards are being held by Mortgagee to reimburse Mortgagor for the cost of rebuilding or restoration of buildings or improvements on the Premises, as set forth in Paragraph 19 hereof, Mortgagee shall be or become entitled to, and shall accelerate the indebtedness secured hereby, then and in such event, Mortgagee shall be entitled to apply all such insurance proceeds and condemnation awards then held by it in reduction of the indebtedness hereby secured and any excess held by it over the amount of indebtedness then due hereunder shall be returned to Mortgagor or any party entitled thereto without interest.

12. Foreclosure; Expense of Litigation.

When the indebtedness hereby secured, or any part thereof, shall become due, whether by acceleration or otherwise, Mortgagee shall have the right to foreclose the lien hereof for such indebtedness or part thereof and to exercise any right, power or remedy provided in this Mortgage or any of the other Loan Documents. It is further agreed that if default be made in the payment of any part of the secured indebtedness as an alternative to the right of foreclosure for the full secured indebtedness after acceleration thereof, Mortgagee shall have the right to institute partial foreclosure proceedings with respect to the portion of said indebtedness so in default, as if under a full foreclosure, and without declaring the entire secured indebtedness due (such proceeding being hereinafter referred to as a "partial foreclosure"), and provided that if foreclosure sale is made because of default of a part of the secured indebtedness, such sale may be made subject to the continuing lien of this Mortgage for the unmatured part of the secured indebtedness; and it is agreed that such sale pursuant to a partial foreclosure, if so made, shall not in any manner affect the unmatured part of the secured indebtedness, but as to such unmatured part this Mortgage, the lien hereof shall remain in full force and effect just as though no foreclosure sale had been made under the provisions of this Paragraph. Notwithstanding the filing of any partial foreclosure or entry of a decree of sale therein, Mortgagee may elect at any time prior to a foreclosure sale pursuant to such decree, to discontinue such partial foreclosure and to accelerate the secured indebtedness by reason of any uncured default or defaults upon which such partial foreclosure was predicated or by reason of any other defaults, and proceed with full foreclosure proceedings. It is further agreed that several foreclosure sales may be made pursuant to partial foreclosure, without exhausting the right of full or partial foreclosure sale for any unmatured part of the secured indebtedness, it being the purpose to provide for a partial foreclosure sale of the secured indebtedness without exhausting the power to foreclose and to sell the Premises pursuant to any such partial foreclosure for any other part of the secured indebtedness whether matured at the time or subsequently maturing, and without exhausting any right of acceleration and full foreclosure. In the event of a foreclosure sale, Mortgagee is hereby authorized, without the consent of Mortgagor, to assign any and all insurance policies to the purchaser at such sale, or to take such other steps as Mortgagee may deem advisable to cause the interest of such purchaser to be protected by any of the said insurance policies.

In any suit to foreclose or partially foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for attorneys' fees, appraisers' fees, outlays for documentary and

UNOFFICIAL COPY

Property of Cook County Clerk's Office

expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to the title as Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Premises. All expenditures and expenses of the nature in this paragraph mentioned and such expenses and fees as may be incurred in the enforcement of Mortgagor's obligations hereunder, the protection of said Premises and the maintenance of the lien of this Mortgage, including the fees of any attorney employed by Mortgagee in any litigation or proceeding affecting this Mortgage, the Note, or the Premises, including probate and bankruptcy proceedings, or in preparations for the commencement or defense of any proceeding or threatened suit or proceeding shall be immediately due and payable by Mortgagor with interest thereon at the Default Rate and shall be secured by this Mortgage.

13. Application of Proceeds of Foreclosure Sale.

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

14. Appointment of Receiver.

Upon, or at any time after the filing of a complaint to foreclose (or partially foreclose) this Mortgage, the court in which such complaint is filed may appoint a receiver of the Premises. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of Mortgagor at the time of application for such receiver and without regard to the then value of the Premises or whether the same shall be then occupied as a homestead or not and Mortgagee hereunder or any holder of the Note may be appointed as such receiver. Such receiver shall have power to collect the rents, issues and profits of the Premises during the pendency of such foreclosure suit and, in case of a sale and a deficiency during the full statutory period of redemption, whether there be redemption or not, as well as during any further times when Mortgagor, except for the intervention of such receiver, would be entitled to collect such rents, issues and profits, and all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during the whole of said period. The court from time to time may authorize the receiver to apply the net income in his, her or its hands in payment in whole or in part of: (a) the indebtedness secured hereby, or by any decree foreclosing this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to foreclosure sale; and (b) the deficiency in case of a sale and deficiency.

15. Mortgagee's Right of Possession in Case of Default.

In any case in which under the provisions of this Mortgage Mortgagee has a right to institute foreclosure proceedings, Mortgagor shall forthwith and upon demand of Mortgagee, surrender to Mortgagee, and Mortgagee shall be entitled to take, actual possession of the Premises or any part thereof

personally, or by its agents or attorneys, as for condition broken. Mortgagee's rights and remedies under this Paragraph 16 shall be effective whether before or after the whole principal sum secured hereby is declared to be immediately due and provided hereunder, or whether before or after the institution of legal proceedings to foreclose the lien hereof or before or after sale thereunder. In the event Mortgagee is entitled to take possession of the Premises, Mortgagee in its discretion may, with or without force and with or without process of law, enter upon and take and maintain possession of all or any part of said Premises, together with all documents, books, records, papers and accounts of Mortgagor or then owner of the Premises relating thereto, and may exclude Mortgagor, Mortgagor's beneficiary, or their respective employees, agents or servants, wholly therefrom. In such case Mortgagee, under the powers herein granted, may hold, operate, manage and control the Premises and conduct the business, if any, thereof, either personally or by its agents. Mortgagee shall have full power to use such measures, legal or equitable, as in its discretion may be deemed proper or necessary to enforce the payment or security of the avails, rents, issues, and profits of the Premises, including actions for the recovery of rent, actions, in forcible detainer and actions in distress for rent, Mortgagee shall have full power:

(a) to cancel or terminate any lease or sublease for any cause or on any ground which would entitle Mortgagor to cancel the same;

(b) to elect to disaffirm any lease or sublease which is then subordinate to the lien hereof;

(c) to extend or modify any then existing leases and to enter new leases, which extensions, modifications and leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the indebtedness secured hereby and beyond the date of the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor and all persons whose interests in the Premises are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the mortgage indebtedness, satisfaction of any foreclosure judgment, or issuance of any certificate of sale or deed to any purchaser;

(d) to make any repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements to the Premises as to it may seem judicious;

(e) to insure and reinsure the same and all risks incidental to Mortgagee's possession, operation and management thereof; and

(f) to receive all of such avails, rents, issues and profits; hereby granting full power and authority to exercise each and every of the rights, privileges and powers herein granted at any and all times hereafter without notice to Mortgagor.

Mortgagee shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any lease. To the extent provided by law, Mortgagor shall and does hereby agree to protect, indemnify, defend and hold Mortgagee harmless of and from any and all liability, loss or damage which it may or might incur under said leases or under or by reason of the assignment thereof and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or

UNOFFICIAL COPY

Property of Cook County Clerk's Office

discharge any of the terms, covenants or agreements contained in said leases except for such claims and demands as result directly from the negligent or willful actions of Mortgagee. Should Mortgagee incur any such liability, loss or damage under said leases or under or by reason of the assignment thereof, or in the defense of any claims or demands, the amount thereof, including costs, expenses and attorneys' fees, shall be so much additional indebtedness secured hereby, and shall become immediately due and payable without notice and with interest at the Default Rate.

16. Application of Income Received by Mortgagee.

Mortgagee, in the exercise of the rights and powers hereinabove conferred upon it, shall have full power to use and apply the avails, rents, issues and profits of the Premises to the payment of or on account of any matters deemed reasonably appropriate by Mortgagee, in its sole discretion.

17. Rights Cumulative.

Each right, power and remedy herein conferred upon Mortgagee is cumulative and in addition to every other right, power or remedy, express or implied, given now or hereafter existing under any of the Loan Documents or any other document given to secure the Note or at law or in equity, and each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by Mortgagee, and the exercise or the beginning of the exercise of one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy, and no delay or omission of Mortgagee in

the exercise of any right, power or remedy accruing hereunder or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any default or acquiescence therein.

18. Mortgagee's Right of Inspection.

Subject to the rights of Lessees, Mortgagee and/or its representative shall have the right to inspect the Premises at all reasonable times and access thereto shall be permitted for that purpose.

19. Disbursement of Insurance or Eminent Domain Proceeds.

Mortgagor may apply to Mortgagee for disbursement of proceeds of insurance and/or awards in eminent domain solely in the event that Mortgagor has elected to rebuild or restore the Premises to a complete economic unit, having value acceptable to Mortgagee, in its sole and absolute discretion. Disbursements shall be made by Mortgagee on terms that it deems reasonable in connection with the scope of the project. Notwithstanding the foregoing, Mortgagee shall have the right to elect not to make proceeds available and apply all such proceeds on account of the unpaid principal balance of the Note, irrespective of whether such balance is then due and payable.

20. Release Upon Payment and Discharge of Mortgagor's Obligations; Partial Release.

Mortgagee shall release this Mortgage and the lien thereof by proper instrument upon payment and discharge of all indebtedness secured hereby, including payment of reasonable expenses incurred by Mortgagee in connection with the execution of such release. If applicable, Mortgagee shall also issue partial releases of the lien of this Mortgage in accordance with and subject to the terms and conditions

UNOFFICIAL COPY

Property of Cook County Clerk's Office

contained in the Loan Agreement. Any such partial release shall not impair in any manner the validity or priority of this Mortgage on the portion of the Premises or the security remaining, nor release the personal liability of any person, persons or entity obligated to pay any indebtedness secured hereby, for the full amount of the indebtedness remaining unpaid.

21. Notices.

Any notice or demand required or permitted to be given under this Mortgage shall be in writing and shall be personally delivered or mailed by United States registered or certified mail, return receipt requested, addressed as follows:

To Mortgagee: LASALLE BANK NATIONAL ASSOCIATION
4747 West Irving Park Road
Chicago, Illinois 60641
Attn: Heidi M. Smithson

With copy to: MELTZER, PURTILL & STELLE
1515 East Woodfield Road
Suite 250
Schaumburg, Illinois 60173
Attn: William J. Mitchell
 Pamela L. McLean

To Mortgagor: 2900-14 NORTH MILDRED LIMITED PARTNERSHIP
c/o BEAL PROPERTIES
2320 North Damen Avenue, Suite 1-D
Chicago, Illinois 60647
Attention: William B. Silverstein

With copy to: STRAUSS & MALK
510 Lake Cook Road
Suite 350
Deerfield, Illinois 60015
Attention: Arnold Malk

Either party may designate a different address for notice purposes by giving notice thereof in accordance with this Paragraph 21; provided, however, that such notice shall not be deemed given until actually received by the addressee. Any notice or demand given by United States mail shall be deemed given on the second business day after the same is deposited in the United States mail as registered or certified mail, addressed as above provided with postage thereon fully prepaid.

22. Waiver of Defenses.

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

UNOFFICIAL COPY

Property of Cook County Clerk's Office

23. Waiver of Rights.

Mortgagor hereby covenants and agrees that to the extent permitted by law, Mortgagor shall not and will not apply for or avail itself of any appraisal, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws," now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but hereby waives the benefit of such laws. To the extent permitted by law, Mortgagor, for itself and all who may claim through or under it, waives any and all right to have the property and estates comprising the Premises marshalled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Premises sold as an entirety.

24. Transfer of Premises; Further Encumbrance.

In determining whether or not to make the loan secured hereby, Mortgagee examined the credit-worthiness of Mortgagor and the guarantors and co-maker of the Note (if applicable), found it acceptable and relied and continues to rely upon same as the means of repayment of the Note. Mortgagee also evaluated the background and experience of Mortgagor and the guarantor and co-maker of the Note (if applicable) in owning and operating property such as the Premises, found it acceptable and relied and continues to rely upon same as the means of maintaining the value of the Premises which is Mortgagee's security for the Note. Mortgagor and the guarantor and co-maker of the Note (if applicable) are well-experienced in borrowing money and owning and operating property such as the Premises, were ably represented by a licensed attorney at law in the negotiation and documentation of the loan secured hereby and bargained at arm's length and without duress of any kind for all of the terms and conditions of the loan, including this provision. Mortgagor recognizes that Mortgagee is entitled to keep its loan portfolio at current interest rates by either making new loans at such rates or collecting assumption fees and/or increasing the interest rate on a loan, the security for which is purchased by a party other than Mortgagor. Mortgagor further recognizes that any secondary or junior financing placed upon the Premises (a) may divert funds which would otherwise be used to pay the Note secured hereby; (b) could result in acceleration and foreclosure by any such junior encumbrancer which would force Mortgagee to take measures and incur expenses to protect its security; (c) would detract from the value of the Premises should Mortgagee come into possession thereof with the intention of selling same; and (d) would impair Mortgagee's right to accept a deed in lieu of foreclosure, as a foreclosure by Mortgagee would be necessary to clear the title to the Premises.

In accordance with the foregoing and for the purposes of (i) protecting Mortgagee's security, both of repayment and of value of the Premises; (ii) giving Mortgagee the full benefit of its bargain and contract with Mortgagor; (iii) allowing Mortgagee to raise the interest rate and collect assumption fees; and (iv) keeping the Premises and any beneficial interest free of subordinate financing liens, Mortgagor, any general partner of Mortgagor, any joint venturer of Mortgagor, and any guarantor or co-maker of the Note agree that if this paragraph be deemed a restraint on alienation, that it is a reasonable one, and that, any sale, conveyance, assignment, further encumbrance or other transfer of title to the Premises, or any interest in the Premises or any beneficial interest (whether voluntary or by operation of law), including without limitation, the entering into of an installment agreement for the sale of the Premises, the placement or granting of liens on all or any part of the Premises or any beneficial interest or the placement or granting of chattel mortgages, conditional sales contracts, financing or security agreements which would be or create a lien on the personal property utilized in the operation of the Premises, or the

UNOFFICIAL COPY

Property of Cook County Clerk's Office

placement or granting of a mortgage commonly known as a "wrap around" mortgage or an improvement loan, without Mortgagee's prior written consent shall be an event of default hereunder. For the purpose of, and without limiting the generality of, the preceding sentence, the occurrence at any time of any of the following events shall be deemed to be an unpermitted transfer of title to the Premises and therefore an Event of Default hereunder:

(a) any sale, conveyance, assignment or other transfer of, or the grant of a security interest in, all or any part of the title to the Premises or the beneficial interest in, or power of direction under, any trust agreement with Mortgagor, except as permitted under the terms of the Loan Agreement or hereunder;

(b) any sale, conveyance, assignment or other transfer of, or the grant of a security interest in, any partnership interest in the limited partnership ("Partnership") which comprises Mortgagor;

(c) any sale, conveyance, assignment or other transfer of, or the grant of a security interest in, any shares or ownership interest in the general partner of the Partnership; and

(d) any transfer that is not otherwise permitted under the terms of the Loan Agreement.

Notwithstanding the foregoing, nothing herein shall prohibit any transfer(s) of ownership interests "within the family," as long as after the transfer(s), William B. Silverstein, Thomas B. Silverstein and Ted B. Silverstein own or control at least (i) 50% of the ownership interests or (ii) controlling interest or status in the Real Estate and Mortgagor. A transfer shall be deemed to be "within the family" if it is comprised of any one or more of the following transfers: (a) from any of William B. Silverstein, Thomas B. Silverstein and/or Ted B. Silverstein to any of the descendants of Enoch and Marjorie Silverstein and the spouses of their descendants; and (b) from any of these named individuals or from any transferee within the family to any trust, partnership, limited liability company or other entity for the benefit of any descendant(s) of Enoch and Marjorie Silverstein and the spouses of their descendants.

Any consent by Mortgagee, or any waiver by Mortgagee of an Event of Default under this paragraph shall not constitute a consent to, or waiver of any right, remedy or power of Mortgagee upon a subsequent Event of Default under this Paragraph 24. Mortgagor acknowledges that any agreements, liens, charges or encumbrances created in violation of the provisions of this Paragraph 24 shall be void and of no force or effect.

25. Expenses Relating to Note and Mortgage.

Mortgagor will pay all reasonable expenses, charges, costs and fees relating to the loan evidenced by the Note and secured by this Mortgage or necessitated by the terms of the Note, this Mortgage or any of the other Loan Documents, including without limitation, Mortgagee's attorneys' fees in connection with the negotiation, documentation, administration, servicing and enforcement of the Note, this Mortgage and the other Loan Documents, all filing, registration or recording fees, all other expenses incident to the execution and acknowledgment of this Mortgage and all federal, state, county and municipal taxes, and other taxes (provided Mortgagor shall not be required to pay any income or franchise taxes of Mortgagee), duties, imposts, assessments and charges arising out of or in connection

UNOFFICIAL COPY

Property of Cook County Clerk's Office

with the execution and delivery of the Note and this Mortgage. Mortgagor recognizes that, during the term of the Mortgage, Mortgagee:

(a) May be involved in court or administrative proceedings, including, without restricting the foregoing, foreclosure, probate, bankruptcy, creditors' arrangements, insolvency, housing authority and pollution control proceedings of any kind, to which Mortgagee shall be a party by reason of the Loan Documents or in which the Loan Documents or the Premises are involved directly or indirectly;

(b) May make preparations following the occurrence of an Event of Default hereunder for the commencement of any suit for the foreclosure hereof, which may or may not be actually commenced;

(c) May make preparations following the occurrence of an Event of Default hereunder for, and do work in connection with, Mortgagee's taking possession of and managing the Premises, which event may or may not actually occur;

(d) May make preparations for and commence other private or public actions to remedy an Event of Default hereunder which other actions may or may not be actually commenced;

(e) May enter into negotiations with Mortgagor, any general partner or joint venturer of Mortgagor and/or any guarantor or co-maker of the Note, or any of their respective agents, employees or attorneys, in connection with the existence or curing of any Event of Default hereunder, the sale of the Premises, the assumption of liability for any of the indebtedness represented by the Note or the transfer of the Premises in lieu of foreclosure; or

(f) May enter into negotiations with Mortgagor, any general partner or joint venturer of Mortgagor and/or any guarantor or co-maker of the Note, or any of their respective agents, employees or attorneys, pertaining to Mortgagee's approval of actions taken or proposed to be taken by Mortgagor, any general partner or joint venturer of Mortgagor and/or any guarantor or co-maker of the Note, which approval is required by the terms of this Mortgage.

All expenses, charges, costs and fees described in this Paragraph 25 shall be so much additional indebtedness secured hereby, shall bear interest from the date which is thirty (30) days after notice to Mortgagor until paid at the Default Rate and shall be paid, together with said interest, by Mortgagor.

26. Business Purpose.

Mortgagor covenants that the proceeds of the loan evidenced by the Note and secured by this Mortgage will be used for the purposes specified in 815 ILCS 205/4 (1994), as amended, and that the principal obligation secured hereby constitutes a business loan which comes within the purview of said paragraph.

27. Indemnity.

Except as arises from Mortgagee's gross negligence or willful misconduct, Mortgagor hereby covenants and agrees that no liability shall be asserted or enforced against Mortgagee in the exercise of the rights and powers granted to Mortgagee in this Mortgage, and Mortgagor hereby expressly waives

UNOFFICIAL COPY

Property of Cook County Clerk's Office

and releases any such liability. Mortgagor shall indemnify and save Mortgagee harmless from and against any and all liabilities, obligations, losses, damages, claims, costs and expenses (including attorneys' fees and court costs) of whatever kind or nature which may be imposed on, incurred by or asserted against Mortgagee at any time by any third party which relate to or arise from: the making of the loan evidenced by the Note and secured by this Mortgage; any suit or proceeding (including probate and bankruptcy proceedings), or the threat thereof, in or to which Mortgagee may or does become a party, either as plaintiff or as a defendant, by reason of this Mortgage or for the purpose of protecting the lien of this Mortgage; the offer for sale or sale of all or any portion of the Premises; and/or the ownership, leasing, use, operation or maintenance of the Premises. All costs provided for herein and paid for by Mortgagee shall be so much additional indebtedness secured hereby and shall become immediately due and payable without notice and with interest at the Default Rate.

28. Waiver of Right of Redemption.

At the written request and direction of Mortgagor, Mortgagor hereby releases and waives any and all rights to retain possession of the Premises after the occurrence of an Event of Default hereunder and any and all rights of redemption from sale under any order or decree of foreclosure, pursuant to rights therein granted, on behalf of Mortgagor, the trust estate of Mortgagor, all persons and entities interested beneficially in Mortgagor and each and every person (except judgment creditors of Mortgagor, in its representative capacity as Trustee of the Trust and/or the trust estate) acquiring any interest in, or title to, the premises described herein subsequent to the date of this Mortgage, and on behalf of all other persons to the extent permitted by the provisions of 735 ILCS 5/15-1601 (1994), as amended, of the Illinois Compiled Statutes or other applicable law or replacement statutes.

29. Miscellaneous.

(a) Successors and Assigns.

This Mortgage and all provisions hereof shall be binding upon and enforceable against Mortgagor and its successors and permitted assigns, any subsequent owner or owners of the Premises who acquire the Premises subject to this Mortgage and all persons claiming under or through Mortgagor, and the word "Mortgagor" when used herein shall include all such persons and all persons liable for the payment of the indebtedness or any part thereof, whether or not such persons shall have executed the Note or this Mortgage. This Mortgage and all provisions hereof shall inure to the benefit of Mortgagee, its successors and assigns and any holder or holders, from time to time, of the Note.

(b) Invalidity of Provisions.

In the event one or more of the provisions contained in this Mortgage or the Note or in any security documents given to secure the payment of the Note secured hereby shall for any reason be held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall at the option of Mortgagee, not affect any other provision of this Mortgage, and this Mortgage shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein or therein. This Mortgage and the Note it secures are to be construed and governed by the substantive laws of the State of Illinois.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

(e) Municipal and Zoning Requirements.

Mortgagor shall not by act or omission knowingly permit any building or other improvement on premises not subject to the lien of this Mortgage to rely on the Premises or any part thereof or any interest therein to fulfill any municipal or governmental requirement, and Mortgagor hereby assigns to Mortgagee any and all rights to give consent for all or any portion of the Premises or any interest therein to be so used. Similarly, Mortgagor shall not, by act or omission, knowingly permit any building or other improvement on the Premises to rely on any premises not subject to the lien of this Mortgage or any interest therein to fulfill any governmental or municipal requirement. Mortgagor shall not by act or omission knowingly impair the integrity of the Premises as a single zoning lot separate and apart from all other premises. Any act or omission by Mortgagor which would result in a violation of any of the provisions of this subparagraph shall be void.

(f) Rights of Tenants.

Mortgagee shall have the right and option to commence a civil action to foreclose this Mortgage and to obtain a Decree of Foreclosure and Sale subject to the rights of any tenant or tenants of the Premises having an interest in the Premises prior to that of Mortgagee. The failure to join any such tenant or tenants of the Premises as party defendant or defendants in any such civil action or the failure of any Decree of Foreclosure and Sale to foreclose their rights shall not be asserted by Mortgagor as a defense in any civil action instituted to collect the indebtedness secured hereby, or any part thereof or any deficiency remaining unpaid after foreclosure and sale of the Premises, any statute or rule of law at any time existing to the contrary notwithstanding.

(e) Use of Proceeds.

Mortgagor warrants that the proceeds evidenced by the Note secured hereby will not be used for the purchase of registered equity securities within the purview of Regulation G issued by the Board of Governors of the Federal Reserve System.

(f) Mortgagee in Possession.

Nothing herein contained shall be construed as constituting Mortgagee a mortgagee in possession in the absence of the actual taking of possession of the Premises by Mortgagee pursuant to this Mortgage.

(g) Relationship of Mortgagee and Mortgagor.

Mortgagee shall in no event be construed for any purpose to be a partner, joint venturer, agent or associate of Mortgagor or of any beneficiary, lessee, operator, concessionaire or licensee of Mortgagor in the conduct of their respective businesses, and without limiting the foregoing, Mortgagee shall not be deemed to be such partner, joint venturer, agent or associate on account of Mortgagee becoming a Mortgagee in possession or exercising any rights pursuant to this Mortgage, any of the other Loan Documents, or otherwise.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

(h) Time of the Essence.

Time is of the essence of the payment by Mortgagor and its of all amounts due and owing to Mortgagee under the Note and the performance and observance by Mortgagor of all terms, conditions, obligations and agreements contained in this Mortgage.

(i) No Merger.

It being the desire and intention of the parties hereto that the Mortgage and the lien thereof do not merge in fee simple title to the Premises, it is hereby understood and agreed that should Mortgagee acquire any additional or other interest in or to the Premises or the ownership thereof, then, unless a contrary intent is manifested by Mortgagee as evidenced by an express statement to that effect in an appropriate document duly recorded, this Mortgage and the lien thereof shall not merge in the fee simple title, to wit, the end that this Mortgage may be foreclosed as if owned by a stranger to the fee simple title.

(j) Value for Purposes of Insurance.

Upon request by Mortgagee, Mortgagor agrees to furnish evidence of replacement value, without cost to Mortgagee, of the type which is regularly and ordinarily made for insurance companies, with respect to the buildings and improvements on the Premises.

(k) Late Charges.

The Note requires the payment of a late charge in the event any installment of principal and/or interest due thereunder and/or any escrow fund payment for taxes and insurance due hereunder shall become overdue for a period in excess of fifteen (15) days. The Note requires the payment to Mortgagee of a late charge of four cents (4¢) for each dollar so overdue to defray part of the cost of collection. Said late charge shall be secured hereby as indebtedness as that term is defined in Paragraph 2 hereof.

(l) Evasion of Prepayment Premium.

Mortgagor hereby covenants and agrees that if the maturity of the indebtedness hereby secured is accelerated by Mortgagee because of an Event of Default hereunder and a tender of payment is made by or on behalf of Mortgagor in an amount necessary to satisfy the indebtedness hereby secured at any time prior to judicial confirmation of a foreclosure sale, such tender shall constitute an evasion of the prepayment premium provided for in the Note, and shall be treated as a prepayment thereunder and Mortgagor shall immediately pay to Mortgagee the Prepayment Premium (as defined in the Note) required to be paid to Mortgagee under the Note.

30. Subordination of Property Manager's Lien.

Any property management agreement for the Premises entered into hereafter by Mortgagor and/or Mortgagor's with a property manager, shall contain a "no lien" provision whereby the property manager waives and releases any and all mechanics' lien rights that the property manager or anyone claiming by, through or under the property manager may have pursuant to 770 ILCS 60.01 (1994), as

UNOFFICIAL COPY

Property of Cook County Clerk's Office

amended, of the Illinois Compiled Statutes. Such property management agreement or a short form thereof shall, at Mortgagee's request, be recorded with the Recorder of Deeds of the county where the Premises are located. In addition, Mortgagor and/or Mortgagor's shall cause the property manager to enter into a Subordination of Management Agreement with Mortgagee, in recordable form, whereby the property manager subordinates present and future lien rights and those of any party claiming by, through or under the property manager, to the lien of this Mortgage.

31. Security Agreement and Financing Statement.

Mortgagor and Mortgagee agree that this Mortgage shall constitute a Security Agreement within the meaning of Section 9-402(6) of the Code with respect to any property included in the definition herein of the word "Premises" which property may not be deemed to form a part of the real estate described in Exhibit A attached hereto or may not constitute a "fixture" (within the meaning of Section 9-313 of the Code), and all replacements of such property, substitutions for such property, additions to such property, books and records relating to the Premises and operation thereof and the proceeds thereof (said property, replacements, substitutions, additions and the proceeds thereof being sometimes herein collectively referred to as "Collateral"); all to secure payment of the indebtedness hereby secured and to secure performance by the Mortgagor of the terms, covenants and provisions hereof.

Upon the occurrence of any Event of Default hereunder, Mortgagee, pursuant to the appropriate provisions of the Code, shall have an option to proceed with respect to both the real property and the Collateral in accordance with its rights, powers and remedies with respect to the real property, in which event the default provisions of the Code shall not apply. Mortgagee and Mortgagor agree that if Mortgagee shall elect to proceed with respect to the Collateral separately from the real property, ten (10) days notice of the sale of the Collateral shall be reasonable notice. The expenses of retaking, holding, preparing for sale, selling and the like incurred by Mortgagee shall include, but not be limited to, attorneys, fees and legal expenses incurred by Mortgagee, including the expenses of in-house staff. Mortgagor agrees that, without the written consent of Mortgagee, Mortgagor will not remove or permit to be removed from the Premises any of the Collateral except that so long as Mortgagor is not in default hereunder, Mortgagor shall be permitted to sell or otherwise dispose of the Collateral when obsolete, worn out, inadequate, unserviceable or unnecessary for use in the operation of the Premises, but only upon replacing the same or substituting for the same other Collateral at least equal in value and utility to the initial value and utility of that disposed of and in such a manner that said replacement or substituted Collateral shall be subject to the security interest created hereby and that the security interest of Mortgagee shall be perfected and first in priority, it being expressly understood and agreed that all replacements, substitutions and additions to the Collateral shall be and become immediately subject to the security interest of this Mortgage and covered hereby.

Mortgagor shall, from time to time, upon written request of Mortgagee and at Mortgagor's sole cost, deliver to Mortgagee: (i) such further financing statements and security documents and assurances as Mortgagee may require, to the end that the liens and security interests created hereby shall be and remain perfected and protected in accordance with the requirements of any present or future law; and (ii) an inventory of the Collateral in reasonable detail. Mortgagor represents and covenants that all Collateral now is, and that all replacements thereof, substitutions therefor or additions thereof, unless the Mortgagee otherwise consents, will be free and clear of liens, encumbrances, title retention devices and security interests of others. If the Collateral is sold in connection with a sale of the Premises, Mortgagor shall notify the Mortgagee prior to such sale and shall require as a condition of such sale that the

UNOFFICIAL COPY

Property of Cook County Clerk's Office

purchaser specifically agree to assume Mortgagor's obligations as to the security interests herein granted and to execute whatever agreements and filings are deemed necessary by the Mortgagee to maintain Mortgagee's first perfected security interest in the Collateral.

32. Compliance with Environmental Laws.

(a) Mortgagor represents and warrants to the Mortgagee that:

(i) To the best of Mortgagor's knowledge, Mortgagor has not used Hazardous Materials (as hereinafter defined), on, from or affecting the Premises in any manner which violates federal, state or local laws, ordinances, rules, regulations or policies governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials and, to the best of Mortgagor's knowledge, (without duty of inquiry) no prior owner of the Premises or any existing or prior tenant, or occupant has used Hazardous Materials on, from or affecting the Premises in any manner which violates federal, state or local laws, ordinances, rules, regulations or policies governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials.

(ii) Mortgagor has never received any notice of any violations (and is not aware of any existing violations) of federal, state or local laws, ordinances, rules, regulations or policies governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials at the Premises and, to the best of Mortgagor's knowledge without duty of inquiry, there have been no actions commenced or threatened by any party for noncompliance which affects the Premises;

(iii) Mortgagor shall keep or cause the Premises to be kept free of Hazardous Materials except to the extent that such Hazardous Materials are stored and/or used in compliance with all applicable federal, state and local laws and regulations; and, without limiting the foregoing, Mortgagor shall not cause or permit the Premises to be used to generate, manufacture, refine, transport, treat, store, handle, dispose of, transfer, produce or process Hazardous Materials, except in compliance with all applicable federal, state and local laws and regulations, nor shall Mortgagor cause or permit, as a result of any intentional or unintentional act or omission on the part of Mortgagor or any tenant, subtenant or occupant, a release, spill, leak or emission of Hazardous Materials onto the Premises or onto any other contiguous property;

(iv) Prior to the initial disbursement of the Loan, Mortgagor shall conduct a complete limited environmental audit. If Hazardous Materials are found, Mortgagor shall take necessary to clean up and remove all Hazardous Materials on, under, from or affecting the Premises as required by all applicable federal, state and local laws, ordinances, rules, regulations and policies, to the satisfaction of Mortgagee, and in accordance with the orders and directives of all federal, state and local governmental authorities. If Mortgagor fails to conduct the limited environmental audit required by Mortgagee, then Mortgagee may at its option and at the expense of Mortgagor, conduct such audit.

(b) Indemnification. Subject to the limitations set forth below, Mortgagor shall defend, indemnify and hold harmless Mortgagee, its employees, agents, officers and directors, from and against

UNOFFICIAL COPY

Property of Cook County Clerk's Office

any claims, demands, penalties, fines, liabilities, settlements, damages, costs or expenses, including, without limitation, reasonable attorneys' and consultants' fees, investigation and laboratory fees, court costs and litigation expenses, known or unknown, contingent or otherwise, arising out of or in any way related to (i) the presence, disposal, release or threatened release of any Hazardous Materials on, over, under, from or affecting the Premises or the soil, water, vegetation, buildings, personal property, persons or animals; (ii) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials on the Premises; (iii) any lawsuit brought or threatened, settlement reached or government order relating to such Hazardous Materials with respect to the Premises, and/or (iv) any violation of laws, orders, regulations, requirements or demands of government authorities, or any policies or requirements of Mortgagee, which are based upon or in any way related to such Hazardous Materials used in the Premises. Notwithstanding the foregoing, Mortgagor shall have no indemnity obligation with respect to any Hazardous Materials introduced to the Premises or any part of the Premises by Mortgagee, its successors or assigns or which are introduced on the Premises subsequent to Mortgagee taking possession thereof and not as a result of any act or omission on the part of Mortgagor.

(c) Definitions. For purposes of this Mortgage the term "Hazardous Materials" includes, without limitation, any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances or related materials defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601, et. seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 1801, et. seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Section 6901, et. seq.), and in the regulations adopted and publications promulgated pursuant thereto, or any other federal, state or local governmental law, ordinance, rule or regulation and shall furthermore have the meanings prescribed and defined in the Loan Agreement.

(d) Additional Obligation. The provisions of this paragraph shall be in addition to any and all other obligations and liabilities Mortgagor may have to Mortgagee under the Loan Documents, or by law, and shall survive: (i) the repayment of all sums due for the debt; (ii) the satisfaction of all of the other obligations of Mortgagor in this Mortgage and under any of the Loan Documents; (iii) the discharge of this Mortgage; and (iv) the foreclosure of this Mortgage or acceptance of a deed in lieu of foreclosure.

33. Compliance with Illinois Mortgage Foreclosure Law.

(a) In the event that any provision of this Mortgage shall be inconsistent with any provision of the Illinois Mortgage Foreclosure Law 735 ILCS 5/15-1101 et. seq. (1994), as amended (herein called the "Act"), the provisions of the Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Act.

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

UNOFFICIAL COPY


Property of Cook County Clerk's Office

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

Mortgagor has executed this instrument the day and year first above written.

2900-14 NORTH MILDRED LIMITED PARTNERSHIP, an Illinois limited partnership

By: ARBECA CORPORATION, an Illinois corporation, its general partner

By: 
THOMAS B. SILVERSTEIN, President

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Property of Cook County Clerk's Office

EXHIBIT A

PARCEL 1:

✓ LOTS 1 TO 8 INCLUSIVE IN ADDISON BLAKELEY'S ADDITION, BEING A SUBDIVISION OF THE WEST 200 FEET OF THE EAST 233 FEET OF THE NORTH 125 FEET OF THE SOUTH 158 FEET OF THE SOUTHWEST ¼ OF BLOCK 5 OF CANAL TRUSTEES SUBDIVISION OF THE EAST ½ OF SECTION 29, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY ILLINOIS.

PARCEL 2:

NON-EXCLUSIVE EASEMENT FOR THE BENEFIT OF PARCEL 1 AS CREATED BY EASEMENT AGREEMENT DATED FEBRUARY 19, 1992 AND RECORDED MARCH 12, 1993 AS DOCUMENT 9328707 FROM WILLIM M. CHUCHRO AND LADONNA M. LOITE TO MILDRED-GEORGE LIMITED PARTNERSHIP FOR THE PURPOSE OF A SECURITY FENCE ON, OVER, ACROSS, THROUGH AND UNDER THE FOLLOWING DESCRIBED LAND: THE EAST 2-1/2 FEET OF THE LOT 3 IN THE SUBDIVISION OF BLOCK 2 IN THE SUBDIVISION OF PART OF THE WEST ½ OF $\frac{1}{4}$ IN CANAL TRUSTEES SUBDIVISION OF THE EAST ½ OF SECTION 29, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN (EXCEPTING PART TAKEN FOR RIGHT OF WAY OF NORTH WESTERN ELEVATED RAILROAD) ALL IN COOK COUNTY, ILLINOIS.

PIN NOS: 14-29-221-013 ✓
~~14-29-221-004~~

CLIENTS\15559\027-2990 MILDRED\EXHIBIT A .DOC

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Property of Cook County Clerk's Office