

UNOFFICIAL COPY

97236717

RECORDING REQUESTED BY:)
 AND WHEN RECORDED MAIL TO:)
 Bank of America National)
 Trust and Savings Association)
 Commercial Mortgage Services)
 50 California St., 12th Floor)
 San Francisco, CA 94111)
 Unit No.: 9372)
 Attn.: Lou Barnett)
 Loan No.: 3027299)

. DEPT-01 RECORDING \$65.00
 : T#0012 TRAN 4553 04/04/97 14:54:00
 : #2439 # ER #-97-236717
 : COOK COUNTY RECORDER

Space above for Recorder's Use

7651732 D2

MORTGAGE
 WITH ASSIGNMENT OF RENTS AND LEASES, FIXTURE AND PERSONALTY
 SECURITY AGREEMENT AND FIXTURE FINANCING STATEMENT
 (Illinois)

65.00
a

The parties to this Mortgage With Assignment of Rents and Leases, Fixture and Personalty Security Agreement and Fixture Financing Statement (this "Mortgage"), made as of **March 31, 1997**, are **Adrian Winick and Adam Winick** ("Mortgagor"), and **BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION** ("Mortgagee").

1. Grant and Secured Obligations.

1.1 Grant. For the purpose of securing payment and performance of the Secured Obligations defined and described in Section 1.2, Mortgagor hereby irrevocably and unconditionally grants, conveys, mortgages and warrants to Mortgagee, with right of entry and possession, all estate, right, title and interest which Mortgagor now has or may later acquire in and to the following property (all or any part of such property, or any interest in all or any part of it, together with the Personalty (as defined in Section 3.1) being hereinafter collectively referred to as the "Property"):

(a) the real property located in the County of Cook, State of Illinois, as described in Exhibit A attached hereto (the "Land"), together with all existing and future easements and rights affording access to the Land; and

(b) all buildings, structures and improvements now located or later to be constructed on the Land (the "Improvements"); and

(c) all existing and future appurtenances, privileges, rights, easements and tenements of the Land, including all minerals, oil, gas, other hydrocarbons and any other commercially valuable substances which may be in, under or produced from any part of the Land, all water and water rights (whether or not appurtenant), and any land lying in the streets, roads or avenues, open or proposed, in front of or adjoining the Land and Improvements; and

(d) all leasehold estate, right, title and interest of Mortgagor in and to all leases (as defined in Section 2.1), subleases, franchises, licenses and other

THIS INSTRUMENT PREPARED BY AND PIN 14-29-305-023
 AFTER RECORDING RETURN TO:

Bank of America National
 Trust and Savings Association
 Commercial Mortgage Services
 50 California St., 12th Floor
 San Francisco, CA 94111
 Unit No.: 9372
 Attn.: Lou Barnett

BOX 333-CTI

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

agreements covering the Land or the Improvements or any portion thereof whether now or hereafter existing or entered into, including all cash or security deposits, advance rentals and deposits or payments of similar nature; and

(e) all rents, income, revenues, issues and profits of or from the Land or the Improvements; and

(f) all Fixtures (as that term is hereinafter defined); and

(g) all proceeds, including all claims to and demands for them, of the voluntary or involuntary conversion of any of the Land, the Improvements or the other property described above into cash or liquidated claims, including proceeds of all present and future fire, hazard or casualty insurance policies and all condemnation awards or payments now or later to be made by any public body or decree by any court of competent jurisdiction for any taking or in connection with any condemnation or eminent domain proceeding, and all causes of action and their proceeds for any damage or injury to the Land, the Improvements or the other property described above or any part of them, or breach of warranty in connection with the construction of the Improvements, including causes of action arising in tort, contract, fraud or concealment of a material fact; and

(h) all additions and accretions to, substitutions and replacements for, and changes in any of the property described above.

1.2 Secured Obligations. Mortgagor makes the grant, conveyance, and mortgage set forth in Section 1.1, makes the irrevocable and absolute assignment set forth in Article II, and grants the security interest set forth in Article III, all for the purpose of securing the following obligations in any order of priority that Mortgagee may choose (collectively, the "Secured Obligations;" individually, a "Secured Obligation"):

(a) payment of all obligations at any time owing under a promissory note (the "Note") dated as of even date herewith, payable by Mortgagor as maker in the stated principal amount of **Three Hundred Thirty-five Thousand and no/100 Dollars (\$335,000.00)** to the order of Mortgagee; and

(b) payment and performance of all obligations of Mortgagor under this Mortgage; and

(c) payment and performance of all obligations of Mortgagor under a Term Loan Agreement executed as of **March 31, 1997** even date herewith by Mortgagor as "Borrower" and Mortgagee as "Bank" (the "Loan Agreement") and under any "Loan Documents" as defined in the Loan Agreement; provided that this Mortgage does not secure any provision in any Loan Document that is expressly stated to be unsecured; and

(d) payment and performance of all future advances and other obligations that Mortgagor or any successor in ownership of all or part of the Property may agree to pay and/or perform (whether as principal, surety or guarantor) for the benefit of Mortgagee, when a writing evidences the parties' agreement that the advance or obligation be secured by this Mortgage; and

(e) payment and performance of all modifications, amendments, extensions, and renewals, however evidenced, of any of the Secured Obligations.

All persons who may have or acquire an interest in all or any part of the Property will be considered to have notice of, and will be bound by, the terms of the Secured Obligations and each agreement or instrument made or entered into in connection with each of the Secured Obligations.

(f) All persons who may have or acquire an interest in all or any part of the Property will be considered to have notice of, and will be bound by, the terms of the

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Secured Obligations and each other agreement or instrument made or entered into in connection with each of the Secured Obligations. Such terms include any provisions in the Note or the Loan Agreement which permit borrowing, repayment and reborrowing, or which provide that the interest rate on one or more of the Secured Obligations may vary from time to time.

2. Assignment of Lessor's Interest in Leases and Assignment of Rents

2.1 Absolute Assignment. Mortgagor hereby irrevocably, absolutely, presently and unconditionally assigns to Mortgagee:

(a) all of Mortgagor's right, title and interest in, to and under any and all leases, licenses and other agreements of any kind relating to the use or occupancy of all or any portion of the Property, whether now in effect or entered into in the future (collectively, the "Leases," individually, a "Lease"), including (i) all guarantees of and security for lessees' performance under any and all Leases, and (ii) all amendments, extensions, renewals or modifications to any Leases; and

(b) all rents (and payments in lieu of rents), income, profit, payments, accounts, revenue, proceeds and other benefits at any time payable under any and all Leases, any and all security deposits received or to be received by Mortgagor pursuant to any and all Leases, and all rights and benefits accrued or to accrue to Mortgagor under any and all Leases (collectively "Rents").

THIS IS AN ABSOLUTE AND PRESENT ASSIGNMENT, NOT AN ASSIGNMENT FOR SECURITY ONLY.

2.2 Grant of License. Mortgagee hereby confers upon Mortgagor a license (the "License") to collect and retain the Rents as they become due and payable, so long as no Event of Default, as defined in Section 7.1, shall exist and be continuing. If an Event of Default has occurred and is continuing, Mortgagee shall have the right, which it may choose to exercise in its sole discretion, to terminate the License without notice to or demand upon Mortgagor, and without regard to the adequacy of Mortgagee's security under this Mortgage.

2.3 Collection and Application of Rents. Subject to the License granted to Mortgagor under Section 2.2, Mortgagee has the right, power and authority to collect any and all Rents. Mortgagor hereby appoints Mortgagee its attorney-in-fact to perform any and all of the following acts, if and at the times when Mortgagee in its sole discretion may so choose:

- (a) demand, receive and enforce payment of any and all Rents or
- (b) give receipts, releases and satisfactions for any and all Rents; or
- (c) sue either in the name of Mortgagor or in the name of Mortgagee for any and all Rents.

Mortgagee's right to the Rents does not depend on whether or not Mortgagee takes possession of the Property as permitted under Section 7.2(c). In Mortgagee's sole discretion, it may choose to collect Rents either with or without taking possession of the Property. If an Event of Default occurs while Mortgagee is in possession of all or part of the Property and is collecting and applying Rents as permitted under this Mortgage, and any receiver shall nevertheless be entitled to exercise and invoke every right and remedy afforded any of them under this Mortgage and at law or in equity.

2.4 Notice. All lessees under any and all Leases are hereby irrevocably authorized and notified by Mortgagor to rely upon and to comply with (and shall be fully protected in so doing) any notice or demand by Mortgagee for the payment to Mortgagee of any rental or

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

other sums which may at any time become due under the Leases, or for the performance of any of lessees' undertakings under the Leases, and lessees shall have no right or duty to inquire as to whether any Event of Default has actually occurred or is then existing hereunder.

2.5 Proceeds. Mortgagee shall have the right to apply all amounts received by it pursuant to this assignment to pay any of the following in such amounts and in such order as Mortgagee shall deem appropriate: (a) any and all Secured Obligations, together with all costs and attorneys' fees; (b) all expenses of leasing, operating, maintaining and managing the Property, including without limitation, the salaries, fees, commissions and wages of a managing agent and such other employees, agents or independent contractors as Mortgagee deems necessary or desirable; (c) all taxes, charges, claims, assessments, any other liens, and premiums for all insurance Mortgagee deems necessary or desirable; (d) the cost of all alterations, renovations, repairs or replacements, and all expenses incident to taking and retaining possession of the Property.

2.6 Mortgagee Not Responsible. Regardless of whether or not Mortgagee, in person or by agent, takes actual possession of the Land and the Improvements, Mortgagee is not and shall not be deemed to be:

- (a) a "mortgagee in possession" for any purpose; or
- (b) responsible for performing any of the obligations of Mortgagor under any Lease; or
- (c) responsible for any waste committed by lessees or any other parties, any dangerous or defective condition of the Property, or any negligence in the management, upkeep, repair or control of the Property; or
- (d) liable in any manner for the Property or the use, occupancy, enjoyment or operation of all or any part of it.

2.7 Leasing. Mortgagor shall not accept any deposit or prepayment of Rents for any rental period exceeding one (1) month without Mortgagee's prior written consent. Mortgagor shall not lease the Property or any part of it except strictly in accordance with the Loan Agreement. Mortgagor shall apply all Rents in the manner required by the Loan Agreement.

3. Grant of Security Interest.

3.1 Grant of Security Interest. Mortgagor grants to Mortgagee a security in, and pledges and assigns to Mortgagee, all of Mortgagor's right, title and interest now or hereafter acquired in and to all of the following described personal property (collectively, the "Personalty"):

(a) all tangible personal property of every kind and description, whether now existing or later acquired, including, without limitation, all goods, materials, supplies, tools, books, records, chattels, furniture, fixtures, equipment and machinery, and, without limiting the generality of any of the foregoing classifications, including any and all fire sprinkler, alarm, trash compaction, security, heating, ventilation and air conditioning, electrical, plumbing and any other utility, life safety or maintenance system and any and all components or units thereof, and in all cases whether attached to, placed in or on, or used in connection with the use, enjoyment, occupancy or operation of all or any part of the Land and the Improvements, whether stored on the Land or elsewhere; and

(b) all rights to the payment of money, reserves, deferred payments, refunds, savings and deposits, whether now or later to be received from third parties (including

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

all earnest money sales deposits) or deposited by Mortgagor with third parties (including all utility deposits), accounts, including, without limitation, the account maintained with Mortgagee under the TIR Agreement (as that term is defined in the Loan Agreement, provided; however, this Mortgage does not create a lien on accounts receivable, other than accounts receivable constituting Rents, arising in the ordinary course of the business conducted by Mortgagor on the Property), contract rights, money, instruments, documents and chattel paper; and

(c) all general intangibles (to the extent not included under clause (b) above) relating to the Land, the Improvements, and/or any business now or later to be conducted thereon by Mortgagor, including, without limitation, all permits, licenses and goodwill, all books, records and files, including, without limitation, computer readable memory and data and any computer software or hardware reasonably necessary to access and process such memory and data, all architectural and engineering plans, specifications and drawings, and as-built drawings, which arise from or relate to the Land, the Improvements, and/or any of the foregoing property described in this Section 3.1, all claims to or demands for the voluntary or involuntary conversion of any of the Land, the Improvements or the other property described above into cash or liquidated claims, all proceeds of present and future fire, hazard or casualty insurance policies, all condemnation awards or payments now or later to be made by any public body or decree by any court of competent jurisdiction for any taking or in connection with any condemnation or eminent domain proceeding, and all causes of action and their proceeds for any damage or injury to the Land, the Improvements or the other property described above or any part of them, or breach of warranty in connection with the construction of the Improvements, including causes of action arising in tort, contract, fraud or concealment of a material fact; and

(d) all substitutions, replacements, additions, accessions and proceeds for or to any of the foregoing property described in this Section 3.1.

3.2 Financing Statements. Mortgagor shall execute one or more financing statements and such other documents as Mortgagee may from time to time require to perfect or continue the perfection of Mortgagee's security interest in any Personalty. Mortgagor shall pay all fees and costs that Mortgagee may incur in filing such documents in public offices and in obtaining such record searches as Mortgagee may reasonably require. In case Mortgagor fails to execute any financing statements or other documents for the perfection or continuation of any security interest, Mortgagor hereby appoints Mortgagee as its true and lawful attorney-in-fact to execute any such documents on its behalf. If any financing statement or other document is filed in the records normally pertaining to personal property, that filing shall never be construed as in any way derogating from or impairing this Mortgage or the rights or obligations of the parties under it.

3.3 Possession and Use of Collateral. Except as otherwise provided in this Mortgage or the Loan Agreement, so long as no Event of Default exists hereunder, Mortgagor may possess, use, transfer and dispose of any of the Personalty in the ordinary course of Mortgagor's business so long as any such possession, use, transfer or disposal will not have a material and adverse effect on the use, occupancy, operation or value of the Property.

3.4 Security Agreement. This Mortgage constitutes a security agreement under the Illinois Uniform Commercial Code covering all Personalty.

4. Financing Statement.

4.1 Financing Statement; Description of Fixtures. Mortgagor and Mortgagee agree to the extent permitted by law that: (i) all of the goods described within the definition of the word "Fixture" are to become fixtures on the Land described in Article I of the Mortgage; (ii) this Mortgage constitutes a fixture financing statement under Sections 9-313 and 9-402 of the Illinois Uniform Commercial Code, as amended or recodified from time

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

to time, and covers property which includes goods which are or are to become fixtures on the Property; and (iii) Mortgagor is the record owner of the Land described in Article I of this Mortgage. "Fixtures" shall include all articles of personal property now or hereafter attached to, placed upon for an indefinite term or used in connection with said real property, appurtenances and improvements, together with all goods and other property which are or at any time become so related to the Property that an interest in them arises under real estate law.

5. Rights and Duties of the Parties.

5.1 Representations and Warranties. Mortgagor hereby represents and warrants that:

- (a) this Mortgage creates a first and prior lien on the Property;
- (b) the Property includes all property and rights which may be reasonably necessary or desirable to enable Mortgagor to use, enjoy and operate the Land and the Improvements for the present uses thereof;
- (c) The Property which Mortgagor owns which is personal property is free and clear of any security agreements, reservations of title or conditional sales contracts, and there is no presently effective financing statement affecting such personal property on file in any public office except for the security interests granted in Article II and any financing statement executed in connection with, and, with respect to any deposit accounts of Mortgagor in which Mortgagee holds a security interest, there has been no notification of a security interest therein by any other secured party;
- (d) Mortgagor is the record, legal and equitable owner of the Land and Improvements and has good and marketable title to the Property, free and clear of all liens, charges, encumbrances, and security interests whatsoever, except encumbrances approved by Bank;
- (e) Mortgagor has full power and authority to grant this Mortgage;
- (f) Mortgagor will forever warrant and defend its title to the Property, and the validity, enforceability, and priority of the lien and security interest created hereby, against the claims of all persons;
- (g) The execution, delivery, and performance of the Loan Documents and the borrowing evidenced by the Note (i) are within the corporate or partnership power of Mortgagor; (ii) have been authorized by all requisite corporate or partnership action; (iii) have received all necessary approvals and consents, corporate, partnership, governmental, or otherwise; (iv) will not violate, conflict with, result in a breach of, or constitute (with notice or lapse of time, or both) a default under any provision of law, any order or judgment of any court or governmental authority, the articles of incorporation, bylaws, partnership or trust agreement, or other governing instrument of Mortgagor, or any indenture, agreement, or other instrument to which Mortgagor is a party or by which it or any of its property is or may be bound or affected; (v) will not result in the creation or imposition of any lien, charge, or encumbrance whatsoever upon any of its properties or assets, except the lien and security interest created hereby; and (vi) will not require any authorization or license from, or any filing with, any governmental or other body (except for (A) the recordation of this Mortgage in appropriate land records in the state in which the property is located, (B) Uniform Commercial Code filings relating to the security interest created hereby, and (C) any state specific filings, forms or declarations required in connection with the transactions contemplated hereby.
- (h) There is no action, suit, or proceeding, judicial, administrative, or otherwise (including any condemnation or similar proceeding), pending or, to the best

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

knowledge of Mortgagor, threatened or contemplated against, or affecting, Mortgagor or the Property.

(i) The Property and Improvements are not located in an area identified by the Secretary of Housing and Urban Development, or any successor thereof, as an area having special flood, mudslide, and/or flood-related erosion hazards pursuant to the National Flood Insurance Act of 1968 or the Flood Disaster Protection Act of 1973, as amended, or any successor law, or, if any portion of the Improvements is located within any such area, Mortgagor has obtained and will maintain the insurance prescribed in the Loan Agreement.

(j) Mortgagor has all necessary certificates, permits, licenses, and other approvals, governmental and otherwise (including all zoning, building code, land use, environmental and similar approvals), necessary for the operation of the Property and the conduct of its business thereat, all of which are in full force and effect as of the date hereof and all operations conducted thereon are in substantial compliance with such approvals;

(k) The Property, and the present and contemplated used and occupancy thereof, are in full compliance with all applicable zoning ordinances, building codes, land use, and other similar laws;

(l) The Property is served by all utilities required for the contemplated use thereof;

(m) All public roads and streets necessary to serve the Premises and Improvements for the contemplated use thereof have been completed, are serviceable in all weather, and, where required by the appropriate governmental entities, have been dedicated to and formally accepted by such governmental entities.

(n) The Property is in good repair and is free and clear from damage caused by fire or other casualty;

(o) All costs and expenses of any and all labor, materials, supplies, and equipment used in the construction of the Improvements have been paid in full;

(p) Mortgagor has paid in full for, and is the owner of, all furnishings, fixtures, and equipment (other than lessees' property) used in connection with the operation of Property, free and clear of any and all security interests, liens, or encumbrances, except the encumbrances approved by Mortgagee and the lien and security interest created hereby;

(q) There is no proceeding pending or threatened for the total or partial condemnation of the Property;

(r) The Property is not under substantial construction or rehabilitation;

(s) All taxes and governmental assessments, insurance premiums, water, sewer and municipal charges, and ground rents, if any, that are due and owing as of the date hereof have been paid;

(t) Mortgagor is the sole owner and holder of the Lessor's interest under all of the Leases related to the Property. There are no assignments of the lessor's interest in any of the Leases or any portion of the Rents due and payable or to become due and payable thereunder which remain in effect on the date hereof other than under this Mortgage and the other Loan Documents;

(u) Each lessee occupies a portion of the Property pursuant to a Lease which is in full force and effect and, other than those Leases now in effect, the Property is

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

not subject to any leases or other agreements granting any rights to use, occupy or possess the Property; other than those lessees with interests in Leases in effect, no person has any leasehold or possessory or occupancy right or interest in the Property; and

(v) All of the Leases are in full force and effect and will remain in full force and effect following the consummation of the transactions contemplated hereby. Except as set forth in the rent roll delivered to Mortgagee on the date hereof (1) none of the lessees are in default in the payment of Rent under the Leases, (2) the Mortgagor has complied with the terms of the Leases and is not in default in respect of any of its obligations under any of the Leases, (3) Mortgagor has not received any notice of default from any lessees under the Leases, (4) no lessee has been given any free rent or concessions or abatements relating to the payment of rent or additional rent which remain unexpired on the date hereof, nor has any lessee been given any credit for or offset or claim against the obligation to pay any fixed rent or additional rent by reason of prepayment of rent or otherwise, and (5) none of the Rents have been collected more than one (1) month in advance.

5.2 Performance of Secured Obligations. Mortgagor shall promptly pay and perform each Secured Obligation in accordance with its terms.

5.3 Taxes and Assessments. Mortgagor shall pay prior to delinquency all taxes, levies, charges and assessments (individually and collectively, an "Imposition"), imposed by any public or quasi-public authority or utility company which are (or if not paid, may become) a lien on all or part of the Property or any interest in it, or which may cause any decrease in the value of the Property or any part of it. If any such Imposition becomes delinquent, Mortgagee may require Mortgagor to present evidence that they have been paid in full, on ten (10) days' written notice by Mortgagee to Mortgagor. Notwithstanding the foregoing provisions of this Section 5.3, Mortgagor may, at its expense, contest the validity or application of any Imposition by appropriate legal proceedings promptly initiated and conducted in good faith and with due diligence, provided that (i) Mortgagee is reasonably satisfied that neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, or lost as a result of such contest, and (ii) Mortgagor shall have posted a bond or furnished such other security as may be reasonably required from time to time by Mortgagee.

5.4 Liens, Charges and Encumbrances. Mortgagor shall immediately discharge any lien on the Property which Mortgagee has not consented to in writing. Mortgagor shall pay when due each obligation secured by or reducible to a lien, charge or encumbrance which now does or later may encumber or appear to encumber all or part of the Property or any interest in it, whether the lien, charge or encumbrance is or would be senior or subordinate to this Mortgage.

5.5 Damages and Insurance and Condemnation Proceeds.

(a) Mortgagor hereby absolutely and irrevocably assigns to Mortgagee, and authorizes the payor to pay to Mortgagee, the following claims, causes of action, awards, payments and rights to payment:

(i) all awards of damages and all other compensation payable directly or indirectly because of a condemnation, proposed condemnation or taking for public or private use which affects all or part of the Property or any interest in it; and

(ii) all other awards, claims and causes of action, arising out of any warranty affecting all or any part of the Property, or for damage or injury to or decrease in value of all or part of the Property or any interest in it; and

(iii) all proceeds of any insurance policies payable because of loss sustained to all or part of the Property; and

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

(iv) all interest which may accrue on any of the foregoing.

(b) Mortgagor shall immediately notify Mortgagee in writing if:

(i) any damage occurs or any injury or loss is sustained to all or any part of the Property, or any action or proceeding relating to any such damage, injury or loss is commenced; or

(ii) any offer is made, or any action or proceeding is commenced, which relates to any actual or proposed condemnation or taking of all or part of the Property.

If Mortgagee chooses to do so, it may in its own name appear in or prosecute any action or proceeding to enforce any cause of action based on warranty, or for damage, injury or loss to all or part of the Property, and it may make any compromise or settlement of the action or proceeding. Mortgagee, if it so chooses, may participate in any action or proceeding relating to condemnation or taking of all or part of the Property, and may join Mortgagor in adjusting any loss covered by insurance.

(c) All proceeds of these assigned claims, other property and rights which Mortgagor may receive or be entitled to shall be paid to Mortgagee. In each instance, Mortgagee shall apply those proceeds first toward reimbursement of all of Mortgagee's costs and expenses of recovering the proceeds, including attorneys' fees. If, in any instance, each and all of the following conditions are satisfied in Mortgagee's reasonable judgment, Mortgagee shall permit Mortgagor to use the balance of the proceeds ("Net Claims Proceeds") to pay costs of repairing or reconstructing the Property:

(i) the plans and specifications, cost breakdown, construction contract, construction schedule, contractor and payment and performance bond for the work or repair or reconstruction must all be acceptable to Mortgagee; and

(ii) Mortgagee must receive evidence satisfactory to it that after repair or reconstruction the Property would be at least as valuable as it was immediately before the damage or condemnation occurred; and

(iii) the Net Claims Proceeds must be sufficient in Mortgagee's determination to pay for the total cost of repair or reconstruction, including all associated development costs and interest projected to be payable on the Secured Obligations until the repair or reconstruction is complete; or Mortgagor must provide its own funds in an amount equal to the difference between the Net Claims Proceeds and a reasonable estimate, made by Mortgagor and found acceptable by Mortgagee, of the total cost of repair or reconstruction; and

(iv) Mortgagee must receive evidence satisfactory to it that all Leases which it may find acceptable will continue after the repair or reconstruction is complete;

(v) no Event of Default shall have occurred and be continuing; and

(vi) The Improvements shall take no more than one (1) year to reconstruct and shall be completed no less than three (3) months before the maturity date.

(d) If Mortgagee finds that the foregoing conditions are met, Mortgagee shall hold the Net Claims Proceeds and any funds which Mortgagor is required to provide in a noninterest-bearing account in which Mortgagee shall have been granted a perfected security interest as security for the Secured Obligations and shall disburse them to Mortgagor to pay costs of repair or reconstruction upon presentation of evidence reasonably satisfactory to Mortgagee that repair or reconstruction has been completed satisfactorily and lien-free. However, if Mortgagee finds that one or more of the foregoing conditions are not satisfied, it may apply the Net Claims Proceeds to pay or

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

prepay (without premium) some or all of the Secured Obligations in such order and proportions as it in its sole discretion may choose.

5.6 Maintenance and Preservation of Property.

(a) Mortgagor shall insure the Property as required by the Loan Agreement and keep the Property in good condition and repair.

(b) Mortgagor shall not remove or demolish the Improvements, or any part thereof, or alter or add to the Improvements, or initiate or allow any change in any zoning or other land use classification which affects the Property or any part of it, except as permitted by the Loan Agreement.

(c) If all or part of the Property becomes damaged or destroyed, Mortgagor shall promptly and completely repair and/or restore the Property in a good and workmanlike manner in accordance with sound building practices, regardless of whether or not Mortgagee agrees to disburse insurance proceeds or other sums to pay costs of the work of repair or reconstruction under Section 5.5.

(d) Mortgagor shall not commit or allow any waste of the Property.

(e) Mortgagor shall perform all other acts which from the character or use of the Property may be reasonably necessary to maintain and preserve its value and utility.

5.7 Releases, Extensions, Modifications and Additional Security.

(a) From time to time, Mortgagee may perform any of the following acts without incurring any liability or giving notice to any person:

(i) release any person liable for payment of any Secured Obligation;

(ii) extend the time for payment, or otherwise alter the terms of payment, of any Secured Obligation;

(iii) accept additional real or personal property of any kind as security for any Secured Obligation, whether evidenced by deeds of trust, mortgages, security agreements or any other instruments of security;

(iv) alter, substitute or release any property securing the Secured Obligations;

(v) consent to the making of any plat or map of the Property or any part of it;

(vi) join in granting any easement or creating any restriction affecting the Property; or

(vii) join in any subordination or other agreement affecting this Mortgage or the lien of it.

5.8 Release. When all of the Secured Obligations have been paid in full and all fees and other sums owed by Mortgagor under Section 5.9 have been received, Mortgagee shall release this Mortgage, the lien created thereby, and all notes and instruments evidencing the Secured Obligations. Mortgagor shall pay any costs of recordation of such release.

5.9 Compensation, Exculpation, Indemnification.

97236717

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

(a) Mortgagor agrees to pay fees in the maximum amounts legally permitted, or reasonable fees as may be charged by Mortgagee when the law provides no maximum limit, for any services that Mortgagee may render in connection with this Mortgage, including Mortgagee's providing a statement of the Secured Obligations or providing the release pursuant to Section 5.8. Mortgagor shall also pay or reimburse all of Mortgagee's costs and expenses which may be incurred in rendering any such services. Mortgagor further agrees to pay or reimburse Mortgagee for all costs, expenses and other advances which may be incurred or made by Mortgagee in any efforts to enforce any terms of this Mortgage, including any rights or remedies afforded to Mortgagee under Section 7.2, whether any lawsuit is filed or not, or in defending any action or proceeding arising under or relating to this Mortgage, including attorneys' fees and other legal costs, costs of any Foreclosure Sale (as defined in Section 7.2(h)) and any cost of evidence of title. If Mortgagee chooses to dispose of Property through more than one Foreclosure Sale, Mortgagor shall pay all costs, expenses or other advances that may be incurred or made by Mortgagee in each of those Foreclosure Sales.

(b) Mortgagee shall not be directly or indirectly liable to Mortgagor or any other person as a consequence of any of the following:

(i) Mortgagee's exercise of or failure to exercise any rights, remedies or powers granted to it in this Mortgage;

(ii) Mortgagee's failure or refusal to perform or discharge any obligation or liability of Mortgagor under any agreement related to the Property or under this Mortgage; or

(iii) any loss sustained by Mortgagor or any third party resulting from Mortgagee's failure to lease the Property, or from any other act or omission of Mortgagee in managing the Property, after an Event of Default, unless the loss is caused by the willful misconduct and bad faith of Mortgagee

Mortgagor hereby expressly waives and releases all liability of the types described above, and agrees that no such liability shall be asserted against or imposed upon Mortgagee.

(c) Mortgagor agrees to indemnify Mortgagee against and hold it harmless from all losses, damages, liabilities, claims, causes of action, judgments, court costs, attorneys' fees and other legal expenses, cost of evidence of title, cost of evidence of value, and other costs and expenses which it may suffer or incur:

(i) in performing any act required or permitted by this Mortgage or any of the other Loan Documents or by law;

(ii) because of any failure of Mortgagor to perform any of the Secured Obligations; or

(iii) because of any alleged obligation of or undertaking by Mortgagee to perform or discharge any of the representations, warranties, conditions, covenants or other obligations of Mortgagor in any document relating to the Property other than the Loan Documents.

This agreement by Mortgagor to indemnify Mortgagee shall survive the release and cancellation of any or all of the Secured Obligations and the full or partial release of this Mortgage.

(d) Mortgagor shall pay all obligations to pay money arising under this Section 5.9 immediately upon demand by Mortgagee. Each such obligation shall be added to, and considered to be part of, the principal of the Note, and shall bear interest from the date the obligation arises at the rate then being applied to the principal balance of the Note.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

5.10 Defense and Notice of Claims and Actions. At Mortgagor's sole expense, Mortgagor shall protect, preserve and defend the Property and title to and right of possession of the Property, and the security of this Mortgage and the rights and powers of Mortgagee created under it, against all adverse claims. Mortgagor shall give Mortgagee prompt notice in writing if any claim is asserted which does or could affect any of these matters, or if any action or proceeding is commenced which alleges or relates to any such claim.

5.11 Subrogation. Mortgagee shall be subrogated to the liens of all encumbrances, whether released of record or not, which are discharged in whole or in part by Mortgagee in accordance with this Mortgage or with the proceeds of any loan secured by this Mortgage.

5.12 Site Visits, Observation and Testing. Mortgagee and its agents and representatives shall have the right to enter and visit the Property at any reasonable time for the purposes of observing it, performing appraisals, taking and removing soil or groundwater samples and conducting tests on any part of it, as provided in the Loan Agreement.

6. Sale, Transfer, or Encumbrance of the Property.

6.1 Due-on-Sale or Encumbrance.

(a) Mortgagor acknowledges that Mortgagee has examined and relied on the creditworthiness of **Mortgagor** and the experience of **Mortgagor** in owning properties such as the Property in agreeing to make the loan secured hereby, and that Mortgagee will continue to rely on **Mortgagor's** ownership of the Property as a means of maintaining the value of the Property as security for repayment of the Secured Obligations. Mortgagor acknowledges that Mortgagee has a valid interest in maintaining the value of the Property so as to ensure that, should Mortgagor default in the repayment of the Obligations, Mortgagee can recover the Secured Obligations by a sale of the Property. Except as otherwise provided in Section 6.1(c) hereof, Mortgagor shall not sell, convey, mortgage, encumber, pledge or otherwise transfer the Property or any part thereof or interest therein (including ownership interests in Mortgagor, and all or any portion of the beneficial interest if Mortgagor is a land trust), or permit the Property or any part thereof or interest therein (including ownership interests in the Mortgagor) to be sold, conveyed, mortgage, encumbered, pledged or otherwise transferred. Upon any sale, conveyance, mortgage, encumbrance, pledge or other transfer which is prohibited under this Section 6.1, Mortgagee in its sale discretion may declare all of the Secured Obligations to be due and payable, and Mortgagee may invoke any rights and remedies provided by Article VII of the Mortgage.

(b) A sale, conveyance, mortgage, encumbrance, pledge or transfer within the meaning of this Section 6.1 shall be deemed to include (i) an installment sales agreement wherein Mortgagor agrees to sell the Property or any part thereof for a price to be paid in installments; (ii) an agreement by Mortgagor leasing all or a substantial part of the Property for other than actual occupancy by a space lessee thereunder or a sale, assignment or other transfer of, or the grant of a security interest in, Mortgagor's right, title and interest in and to any Leases or any Rents; (iii) if **Mortgagor** or any general partner of **Mortgagor** is a corporation, the voluntary or involuntary sale, conveyance or transfer of shares of any of such corporation's stock possessing, in the aggregate, more than fifty percent (50%) of the voting power or more than fifty percent (50%) of the direct or indirect beneficial ownership of such corporation; (iv) if **Mortgagor** or any general partner of **Mortgagor** is a limited or general partnership or joint venture, the change, removal or resignation of a general partner or managing partner or the transfer of the partnership interest of any direct or indirect general partner or managing partner, dissolution of the Partnership under Illinois law, or any direct or indirect transfer or transfers of, in the aggregate, more than fifty percent (50%) of the

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

partnership interests in **Mortgagor**; and (v) if **Mortgagor** or any general partner of **Mortgagor** is a limited liability company, the change, removal or resignation of a managing member or the transfer by a Managing Member of its interest in the company or any transfer or transfers of, in the aggregate, more than fifty percent (50%) of the membership interests; and (vi) if **Mortgagor** is a land trust, the sale, conveyance, mortgage, encumbrance, pledge or transfer of all or any portion of the beneficial interest thereof including the power of direction.

7. Events of Default; Remedies.

7.1 Events of Default. Upon the occurrence of any one or more of the following events, Mortgagee may, by written notice delivered to **Mortgagor**, declare **Mortgagor** to be in default, and thereupon the same shall constitute an "Event of Default" under this Mortgage:

(a) An Event of Default is declared under the Loan Agreement or any other Loan Document; or

(b) **Mortgagor** sells, conveys, mortgages, encumbers, pledges or otherwise transfers the Property or any part thereof or interest therein (including beneficial ownership in the **Mortgagor** or ownership interests in the **Mortgagor**), or permits the Property or any part thereof or interest therein (including ownership interests in the **Mortgagor**) to be sold, conveyed, mortgaged, encumbered, pledged or otherwise transferred in violation of Section 6.1 hereof; or

(c) Any representation or warranty made or given by **Mortgagor** in this Mortgage proves to be false or misleading in any material respect; or

7.2 Remedies. At any time after an Event of Default, Mortgagee shall be entitled to invoke any and all of the rights and remedies described below. All of such rights and remedies shall be cumulative, and the exercise of any one or more of them shall not constitute an election of remedies.

(a) Acceleration. Mortgagee may declare any or all of the Secured Obligations to be due and payable immediately.

(b) Receiver. Mortgagee shall, as a matter of right, without notice and without giving bond to **Mortgagor** or anyone claiming by, under or through **Mortgagor**, and without regard for the solvency or insolvency of **Mortgagor** or the then value of the Property, to the extent permitted by applicable law, be entitled to have a receiver appointed for all or any part of the Property and the Rents, and the proceeds, issues and profits thereof, with the rights and powers referenced below and such other rights and powers as the court making such appointment shall confer, and **Mortgagor** hereby consents to the appointment of such receiver and shall not oppose any such appointment. Such receiver shall have all powers and duties prescribed by Section 15-1704 of the Act (as defined in subsection (g) below), all other powers which are necessary or usual in such cases for the protection, possession, control, management and operation of the Property, and such rights and powers as Mortgagee would have, upon entering and taking possession of the Property under subsection (c) below. In addition to any provision of this Mortgage authorizing the Mortgagee to take or be placed in possession of the mortgaged real estate, or for the appointment of a receiver, Mortgagee shall have the right, in accordance with Section 15-1701 and 15-1702 of the Act, to be placed in possession of the mortgaged real estate or at its request to have a receiver appointed, and such receiver, or Mortgagee, if and when placed in possession, shall have, in addition to any other powers provided in this Mortgage, all rights, powers immunities, and duties as provided for in Sections 15-1701 and 15-1703 of the Act.

(c) Entry. Mortgagee, in person, by agent or by court-appointed receiver, may enter, take possession of, manage and operate all or any part of the Property, and may

n:\mnavarro\winick4\dot

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

also do any and all other things in connection with those actions that Mortgagee may in its sole discretion consider necessary and appropriate to protect the security of this Mortgage. Such other things may include: taking and possessing all of Mortgagor's or the then owner's books and records; entering into, enforcing, modifying, or canceling Leases on such terms and conditions as Mortgagee may consider proper; obtaining and evicting tenants; fixing or modifying rents; collecting and receiving any payment of money owing to Mortgagor; completing any unfinished construction; and/or contracting for and making repairs and alterations. If Mortgagee so requests, Mortgagor shall assemble all of the Property that has been removed from the Land and make all of it available to Mortgagee at the site of the Land.

(d) Cure; Protection of Security. Mortgagee may cure any breach or default of Mortgagor, and if it chooses to do so in connection with any such cure, Mortgagee may also enter the Property and/or do any and all other things which it may in its sole discretion consider necessary and appropriate to protect the security of this Mortgage. Such other things may include: appearing in and/or defending any action or proceeding which purports to affect the security of, or the rights or powers of Mortgagee under, this Mortgage; paying, purchasing, contesting or compromising any encumbrance, charge, lien or claim of lien which in Mortgagee's sole judgment is or may be senior in priority to this Mortgage, such judgment of Mortgagee to be conclusive as among the parties to this Mortgage; obtaining insurance and/or paying any premiums or charges for insurance required to be carried under the Loan Agreement; otherwise caring for and protecting any and all of the Property; and/or employing counsel, accountants, contractors and other appropriate persons to assist Mortgagee. Mortgagee may take any of the actions permitted under this Section 7.2 either with or without giving notice to any person.

(e) Uniform Commercial Code Remedies. Mortgagee may exercise any or all of the remedies granted to a secured party under the Illinois Uniform Commercial Code.

(f) Foreclosure; Lawsuits. Mortgagee shall have the right, in one or several concurrent or consecutive proceedings, to foreclose the lien hereof upon the Property or any part thereof, for the Secured Obligations, or any part thereof, by any proceedings appropriate under applicable law. Mortgagee or its nominee may bid and become the purchaser of all or any part of the Property at any foreclosure or other sale hereunder, and the amount of Mortgagee's successful bid shall be credited on the Secured Obligations. Without limiting the foregoing, Mortgagee may proceed by a suit or suits in law or equity, whether for specific performance of any covenant or agreement herein contained or in aid of the execution of any power herein granted, or for any foreclosure under the judgment or decree of any court of competent jurisdiction.

(g) Other Remedies. Mortgagee may exercise all rights and remedies contained in any other instrument, document, agreement or other writing heretofore, concurrently or in the future executed by Mortgagor or any other person or entity in favor of Mortgagee in connection with the Secured Obligations or any part thereof, without prejudice to the right of Mortgagee thereafter to enforce any appropriate remedy against Mortgagor. Mortgagee shall have the right to pursue all remedies afforded to a mortgagee under the Illinois Mortgage Foreclosure Law (the "Act") and other applicable law, and shall have the benefit of all of the provisions of the Act and such applicable law, including all amendments thereto which may become effective from time to time after the date hereof. In the event any provision of the Act which is specifically referred to herein may be repealed, Mortgagee shall have the benefit of such provision as most recently existing prior to such repeal, as though the same were incorporated herein by express reference.

(h) Sale of Personal Property. Mortgagee shall have the discretionary right to cause some or all of the Property, which constitutes personal property, to be sold or otherwise disposed of in any combination and in any manner permitted by applicable law.

(i) For purposes of this power of sale, Mortgagee may elect to treat as personal property any Property which is intangible or which can be severed from the

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Land or Improvements without causing structural damage. If it chooses to do so, Mortgagee may dispose of any personal property, in any manner permitted by Article 9 of the Illinois Uniform Commercial Code, including any public or private sale, or in any manner permitted by any other applicable law.

(ii) In connection with any sale or other disposition of such Property, Mortgagor agrees that the following procedures constitute a commercially reasonable sale: Mortgagee shall mail written notice of the sale to Mortgagor not later than forty-five (45) days prior to such sale. Once per week during the four weeks immediately preceding such sale, Mortgagee will publish notice of the sale in a local daily newspaper of general circulation. Upon receipt of any written request, Mortgagee will make the Property available to any bona fide prospective purchaser for inspection during reasonable business hours. Notwithstanding, Mortgagee shall be under no obligation to consummate a sale if, in its judgment, none of the offers received by it equals the fair value of the Property offered for sale. The foregoing procedures do not constitute the only procedures that may be commercially reasonable.

(i) Single or Multiple Foreclosure Sales.

If the Property consists of more than one lot, parcel or item of property, Mortgagee may:

(i) designate the order in which the lots, parcels and/or items shall be sold or disposed of or offered for sale or disposition; and

(ii) elect to dispose of the lots, parcels and/or items through a single consolidated sale or disposition to be held or made under or in connection with judicial proceedings, or by virtue of a judgment and decree of foreclosure and sale; or through two or more such sales or dispositions; or in any other manner Mortgagee may deem to be in its best interests (any such sale or disposition, a "Foreclosure Sale;" any two or more, "Foreclosure Sales").

If it chooses to have more than one Foreclosure Sale, Mortgagee at its option may cause the Foreclosure Sales to be held simultaneously or successively, on the same day, or on such different days and at such different times and in such order as it may deem to be in its best interests. No Foreclosure Sale shall terminate or affect the liens of this Mortgage on any part of the Property which has not been sold, until all of the Secured Obligations have been paid in full.

(j) Protective Advances. All advances, disbursements and expenditures made or incurred by Mortgagee before and during a foreclosure, and before and after judgment of foreclosure, and at any time prior to sale, and, where applicable, after sale, and during the pendency of any related proceedings, for the following purposes, in addition to those otherwise authorized by this Mortgage, the other Loan Documents or by the Act (collectively "Protective Advances"), shall have the benefit of all applicable provisions of the Act, including those provisions of the Act hereinbelow referred to:

(i) all advances by Mortgagee in accordance with the terms of the Mortgage to: (i) preserve, maintain, repair, restore or rebuild the improvements upon the mortgaged real estate, (ii) preserve the lien of the Mortgage or the priority thereof; or (iii) enforce the Mortgage, as referred to in Subsection (b)(5) of Section 15-1302 of the Act;

(ii) payments by Mortgagee of: (i) principal, interest or other obligations in accordance with the terms of any senior mortgage or other prior lien or encumbrance; (ii) real estate taxes and assessments, general and special and all other taxes and assessments of any kind or nature whatsoever which are assessed or imposed upon the mortgaged real estate or any part thereof; (iii) other obligations authorized by this Mortgage or other Loan Documents; (iv) with court approval, any other amounts in

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title, as referred to in Section 15-1505 of the Act;

(iii) advances by Mortgagee in settlement or compromise of any claims asserted by claimants under senior mortgages or any other prior liens;

(iv) attorneys' fees and other costs incurred: (i) in connection with the foreclosure of the Mortgage as referred to in Section 1504(d)(2) and 15-1510 of the Act; (ii) in connection with any action, suit or proceeding brought by or against the Mortgagee for the enforcement of the Mortgage or arising from the interest of the Mortgagee hereunder; or (iii) in preparation for or in connection with the commencement, prosecution or defense of any other action related to the Mortgage or the mortgaged real estate;

(v) Mortgagee's fees and costs, including attorneys' fees arising between the entry of judgment of foreclosure and the confirmation hearing as referred to in Subsection of Section 15-1508(b)(1) of the Act;

(vi) expenses deductible from proceeds of sale as referred to in Sections 15-1512(a) and (b) of the Act;

(vii) expenses incurred and expenditures made by Mortgagee for any one or more of the following:

(viii) if the mortgaged real estate or any portion thereof constitutes one or more units under a condominium declaration, assessments imposed upon the unit owner thereof;

(ix) if Mortgagor's interest in the mortgaged real estate is a leasehold estate under a lease or sublease, rentals or the other payments required to be made by the lessee under the terms of the lease or sublease;

(x) premiums for casualty and liability insurance paid by Mortgagee whether or not Mortgagee or a receiver is in possession, is reasonably required, in reasonable amounts, and all renewals thereof, without regard to the limitation to maintain existing insurance in effect at the time any receiver or mortgagee takes possession of the mortgaged real estate imposed by Section 15-1704(c)(1) of the Act; (iv) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (v) payments deemed by Mortgagee to be required for the benefit of the mortgaged real estate or required to be made by the owner of the mortgaged real estate under any grant or declaration of easements, easement agreement, agreement with any adjoining land owners or instruments creating covenants or restrictions for the benefit of or affecting the mortgaged real estate; (vi) shared or common expense assessments payable to any association or corporation in which the owner of the mortgaged real estate is a member in any way affecting the mortgaged real estate;

(xi) if the loan secured hereby is a construction loan, costs incurred by Mortgagee for demolition, preparation for and completion of construction, as may be authorized by the applicable commitment, loan agreement or other agreement;

(xii) payments required to be paid by Mortgagor or Mortgagee pursuant to any lease or other agreement for occupancy of the mortgaged real estate and

(xiii) if the Mortgage is insured, payments of FHA or private mortgage insurance required to keep such insurance in force.

All Protective Advances shall be so much additional indebtedness secured by this Mortgage, and shall become immediately due and payable without notice and with interest

97236717

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

thereon from the date of the advance until paid at the Default Rate under the terms of the Note.

This Mortgage shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Mortgage is recorded pursuant to Subsection (b) (5) of Section 15-1302 of the Act.

All Protective Advances shall, except to the extent, if any, that any of the same is clearly contrary to or inconsistent with the provisions of the Act, apply to and be included in:

(1) any determination of the amount of indebtedness secured by this Mortgage at any time;

(2) the indebtedness found due and owing to the Mortgagee in the judgment of foreclosure and any subsequent supplemental judgments, orders, adjudications or findings by the court of any additional indebtedness becoming due after such entry of judgment, it being agreed that in any foreclosure judgment, the court may reserve jurisdiction for such purpose;

(3) determination of amounts deductible from sale proceeds pursuant to Section 15-1512 of the Act;

(4) application of income in the hands of any receiver or Mortgagee in possession; and

(5) computation of any deficiency judgment pursuant to Section 15-1508(b) (2), 15-1508(e) and 15-1511 of the Act.

7.3 Credit Bids. At any Foreclosure Sale, any person, including Mortgagor or Mortgagee, may bid for and acquire the Property or any part of it to the extent permitted by then applicable law. Instead of paying cash for that property, Mortgagee may settle for the purchase price by crediting the sales price of the property against the following obligations:

(a) first, the portion of the Secured Obligations attributable to the expenses of sale, costs of any action and any other sums for which Mortgagor is obligated to pay or reimburse Mortgagee under Section 5.9; and

(b) second, all other Secured Obligations in any order and proportions as Mortgagee in its sole discretion may choose.

7.4 Application of Foreclosure Sale Proceeds. Mortgagee shall apply the proceeds of any Foreclosure Sale in the following manner:

(a) first, to pay the portion of the Secured Obligations attributable to the expenses of sale, costs of any action and any other sums for which Mortgagor is obligated to reimburse Mortgagee under Section 5.9;

(b) second, to pay the portion of the Secured Obligations attributable to any sums expended or advanced by Mortgagee under the terms of this Mortgage which then remain unpaid;

(c) third, to pay all other Secured Obligations in any order and proportions as Mortgagee in its sole discretion may choose; and

(d) fourth, to remit the remainder, if any, to the person or persons entitled to it.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

7.5 Application of Rents and Other Sums. Mortgagee shall apply any and all Rents collected by it pursuant to the assignment provided in Article II of this Mortgage, and any and all other sums, other than the proceeds of a Foreclosure Sale, received or collected by Mortgagee, in the following manner:

(a) first, to pay the portion of the Secured Obligations attributable to the costs and expenses of collection of such sums, including reasonable attorneys' fees, that may be incurred by Mortgagee and/or any receiver appointed in accordance with this Mortgage;

(b) second, to pay any and all Secured Obligations other than provided in clause (a) above, and any and all expenses of leasing, operating, maintaining and managing the Property and all other costs and charges incident to the Property as provided in Section 2.5 above, and in such order and proportions as Mortgagee in its sole discretion may choose; and

(c) third, to remit the remainder, if any, to the person or persons entitled thereto.

Mortgagee shall have no liability for any funds which it does not actually receive.

8. Application of Payments. Upon receipt of any installment of interest or principal due under the Note or upon receipt of any other funds from or behalf of Mortgagor, Mortgagee shall apply the payments: first in satisfaction of any cost, advances or expenses incurred by Mortgagee as described in the Mortgage; secondly to the unpaid and accrued interest on the unpaid principal balance of the Secured Obligations; the remainder to the unpaid principal balance on the Secured Obligations.

9. Miscellaneous Provisions.

9.1 Additional Provisions. The Loan Documents fully state all of the terms and conditions of the parties' agreement regarding the matters mentioned in or incidental to this Mortgage. The Loan Documents also grant further rights to Mortgagee and contain further agreements and affirmative and negative covenants by Mortgagor which apply to this Mortgage and to the Property.

9.2 No Waiver or Cure. Each waiver by Mortgagee must be in writing, and no waiver shall be construed as a continuing waiver. No waiver shall be implied from any delay or failure by Mortgagee to take action on account of any default of Mortgagor. Consent by Mortgagee to any act or omission by Mortgagor shall not be construed as a consent to any other or subsequent act or omission or to waive the requirement for Mortgagee's consent to be obtained in any future or other instance.

9.3 Powers of Mortgagee. Mortgagee may take any of the actions permitted under Sections 7.2(b) and/or 7.2(c) regardless of the adequacy of the security for the Secured Obligations, or whether any or all of the Secured Obligations have been declared to be immediately due and payable, or whether notice of default and election to sell has been given under this Mortgage. If Mortgagee performs any act which it is empowered or authorized to perform under this Mortgage, including any act permitted by Section 5.8 or Section 7.2(d), any such act alone shall not release or change the personal liability of any person for the payment and performance of the Secured Obligations then outstanding, or the lien of this Mortgage on all or the remainder of the Property for full payment and performance of all outstanding Secured Obligations. The liability of the original Mortgagor shall not be released or changed if Mortgagee grants any successor in interest to Mortgagor any extension of time for payment, or modification of the terms of payment, of any Secured Obligation. Mortgagee shall not be required to comply with any demand by

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

the original Mortgagor that Mortgagee refuse to grant such an extension or modification to, or commence proceedings against, any such successor in interest.

9.4 Merger. No merger shall occur as a result of Mortgagee's acquiring any other estate in or any other lien on the Property unless Mortgagee consents to a merger in writing.

9.5 Joint and Several Liability. If Mortgagor consists of more than one person, each shall be jointly and severally liable for the faithful performance of all of Mortgagor's obligations under this Mortgage.

9.6 Applicable Law. This Mortgage shall be governed by and construed in accordance with Illinois law without giving effect to the conflict of law principles of said state.

9.7 Successors in Interest. The terms, covenants and conditions of this Mortgage shall be binding upon and inure to the benefit of the heirs, successors and permitted assigns of the parties. However, this Section 9.7 does not waive the provisions of Section 6.1. Mortgagee shall have the right in its sole discretion at any time during the term of this Mortgage to sell, assign, syndicate or otherwise transfer or dispose of all or any portion of its interest in this Mortgage, the Note and the Secured Obligations, and the other Loan Documents, all without notice to or the consent of Mortgagor, and after any such transfer Bank of America National Trust and Savings Association shall have no further obligations under the Loan Documents.

9.8 Interpretation. Whenever the context requires, all words used in the singular will be construed to have been used in the plural, and vice versa, and each gender will include any other gender. The captions of the sections of this Mortgage are for convenience only and do not define or limit any terms or provisions. The word "include(s)" means "include(s), without limitation," and the word "including" means "including, but not limited to." The word "obligations" is used in its broadest and most comprehensive sense, and includes all primary, secondary, direct, indirect, fixed and contingent obligations. It further includes all principal, interest, prepayment charges, late charges, loan fees and any other fees and charges accruing or assessed at any time, as well as all obligations to perform acts or satisfy conditions. No listing of specific instances, items or matters in any way limits the scope or generality of any language of this Mortgage. The Exhibits to this Mortgage are hereby incorporated in this Mortgage. Any capitalized words which are defined in the Loan Agreement are used in this Mortgage as so defined.

9.9 In-House Counsel Fees. Whenever Mortgagor is obligated to pay or reimburse Mortgagee for any attorneys' fees, those fees shall include the allocated costs for services of in-house counsel.

9.10 Waiver of Marshalling. Mortgagor waives all rights, legal and equitable, it may now or hereafter have to require marshalling of assets or to require upon foreclosure sales of assets in a particular order. Each successor and assign of Mortgagor, including any holder of a lien subordinate to this Mortgage, by acceptance of its interest or lien agrees that it shall be bound by the above waiver, as if it had given the waiver itself.

9.11 Severability. If any provision of this Mortgage should be held unenforceable or void, that provision shall be deemed severable from the remaining provisions and in no way affect the validity of this Mortgage except that if such provision relates to the payment of any monetary sum, then Mortgagee may, at its option, declare all Secured Obligations immediately due and payable.

9.12 Notices. Any Mortgagor whose address is set forth below hereby requests that a copy of notice of default and notice of sale be mailed to it at that address. If any

97236717

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Mortgagor fails to insert an address, that failure shall constitute a designation of Mortgagor's last known address as the address for such notice.

9.13 Execution of Additional Documents. Mortgagor, at its expense, will execute, acknowledge and deliver all such instruments, documents, assignments, security agreements and other agreements and writings and take all such action as Mortgagee from time to time may reasonably request for assuring to Mortgagee the Premises, properties, rights and interests now or hereafter subjected, or intended to be subjected, to the lien hereof, and in order to secure, perfect, protect or enforce Mortgagee's rights under the Mortgage.

9.14 Headings. Headings in this instrument are for convenience only and shall not be used to interpret or construe its provisions.

9.15 Construction of Mortgage. The Mortgage shall not be construed more strictly against one party than against the other merely by virtue of the fact that it may have been prepared primarily by counsel for one of the parties. It being recognized that both Mortgagor and Mortgagee have contributed substantially and materially to the preparation of the Mortgage.

9.16 Counterparts. This instrument may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

9.17 Execution by Mortgagee. Inasmuch as the Mortgage also serves as a fixture financing statement, Mortgagee has joined in the execution of the Mortgage.

Address Where Notices
to Mortgagor Are to be Sent: 2315 North Southport Avenue
Chicago, IL 60614

Address Where
Notices to Mortgagee
Are to be Sent: Bank of America National
Trust and Savings Association
333 S. Beaudry, 11th Floor
Los Angeles, CA 90017

9.18 WAIVER OF TRIAL BY JURY. MORTGAGOR HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT THAT IT MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION ARISING IN ANY WAY IN CONNECTION WITH THIS MORTGAGE, THE NOTE, OR ANY OF THE OTHER LOAN DOCUMENTS, THE LOAN OR ANY OTHER STATEMENTS OR ACTIONS OF MORTGAGOR OR MORTGAGEE. MORTGAGOR ACKNOWLEDGES THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS MORTGAGE AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS DISCUSSED THIS WAIVER WITH SUCH LEGAL COUNSEL. MORTGAGOR FURTHER ACKNOWLEDGES THAT (a) IT HAS READ AND UNDERSTANDS THE MEANING AND RAMIFICATIONS OF THIS WAIVER, (b) THIS WAIVER IS A MATERIAL INDUCEMENT FOR MORTGAGEE TO MAKE THE LOAN, ENTER INTO THIS MORTGAGE AND EACH OF THE OTHER LOAN DOCUMENTS, AND (c) THIS WAIVER SHALL BE EFFECTIVE AS TO EACH OF SUCH OTHER LOAN DOCUMENTS AS IF FULLY INCORPORATED THEREIN.


9.19 Mortgagor acknowledges that the mortgaged real estate does not constitute agricultural real estate, as said term is defined in Section 15-1201 of the Act or residential real estate as defined in Section 15-1219 of the Act. Pursuant to Section 15-1601(b) of the Act, Mortgagor hereby waives any and all right of redemption.


UNOFFICIAL COPY

97236717

IN WITNESS WHEREOF, Mortgagor has executed this Mortgage as of the date first above written.

Mortgagor:


Adrian Winick


Adam Winick

97236717

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Exhibit A to Mortgage executed as of March 31, 1997, by Adrian Winick and Adam Winick as "Mortgagor" to Bank of America National Trust and Savings Association, a national banking association as "Mortgagee".

Description of Property

That certain real property located in Cook County, Illinois and more particularly described as follows:

LOT 6 AND THE SOUTH 16 1/10 FEET OF LOT 5 IN THE SUBDIVISION OF THE SOUTH 1/2 OF THE EAST 1/2 AND THE SOUTH 1/2 OF THE NORTH 1/2 OF THE EAST 1/2 OF BLOCK 7 IN SUBDIVISION OF BLOCK 44 IN SHEFFIELDS ADDITION TO CHICAGO IN SECTION 29, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

Property of Cook County Clerk's Office

97236717

Street Address of Property
2732 North Magnolia Avenue
Chicago, Illinois

Tax Assessor's Parcel Number
14-29-305-023

n:\navar\to\winick\dot

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

STATE OF ILLINOIS)

) ss.

COUNTY OF COOK)

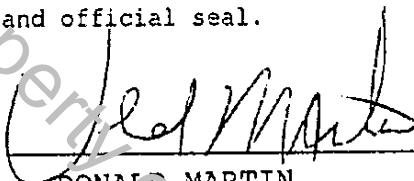
April 2nd, 1997

On _____ before me, Adrian Winick & Adam Winick personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

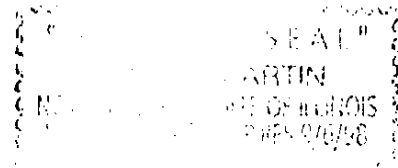
WITNESS my hand and official seal.

[SEAL]

Signature



DONALD MARTIN



97236717

UNOFFICIAL COPY

Property of Cook County Clerk's Office