

7760341 & ①

98886429

2107/0069 30 001 Page 1 of 19
 1998-10-02 11:43:38
 Cook County Recorder 57.00

**TCF NATIONAL BANK
 ILLINOIS
 COMMERCIAL MORTGAGE
 FIXED RATE INSTALLMENT
 LAND TRUST**

THIS MORTGAGE is dated as of September 30, 1998, and is between TCF National Bank Illinois Successor Trustee by merger to Garfield Ridge Trust & Savings Bank, not personally, but as Trustee u/t/a dated March 11, 1988 a/k/a Trust No. 88-3-4 having an address at 6353 W. 55th Street, Chicago, IL, 60638 ("Mortgagor") (defined below) and TCF National Bank Illinois, a national banking association ("Bank"), with an office located at 6353 West 55th Street, Chicago, Illinois 60638 ("Mortgagee") (defined below).

WITNESETH:

Whereas, the Mortgagor and the Beneficiary (defined below) jointly and severally have executed a promissory note dated as of the date of this Mortgage, payable to the order of the Mortgagee in the principal amount of four hundred fifty thousand and 00/100 Dollars (\$450,000.00) ("Note") with interest in arrears on the principal balance remaining from time to time unpaid.

INTEREST shall accrue on the unpaid principal balance of the Note from and after the date thereof at the Rate of eight percent (8%) per annum ("Interest Rate"). After the date of any Default (defined below) or maturity, whether by acceleration or otherwise, interest on the principal balance remaining from time to time unpaid shall be at the per annum rate of four percent (4%) in excess of the then current Interest Rate under the Note ("Default Rate"). The Mortgagee may at its sole discretion adjust the Installment Payments (defined below) to accommodate payment of the Default Rate after a Default is declared in accordance herewith. Interest on the Note shall be computed based on a 360 day calendar year for the actual number of days the principal balance is outstanding.

PRINCIPAL AND INTEREST PAYMENTS ("Installment Payments") on the Note shall be due and payable in equal monthly installments in the amount of four thousand three hundred one and 00/100 Dollars (\$4,301.00), based on a fifteen (15) year amortized rate, beginning on November 10, 1998 and continuing on the tenth day of each calendar month thereafter until October 10, 2003 ("Maturity Date"), at which time the entire unpaid balance of principal, accrued and unpaid interest, fees and charges due under the Note shall be due and payable in full. Any Installment Payments made under the Note may be applied by the Mortgagee in its sole discretion to the Liabilities (defined below) in the order of application as the Mortgagee in its sole discretion shall elect. The Mortgagor shall pay to the Mortgagee a late charge in the amount of five percent (5%) of any Installment Payment of interest or principal, or both, or any other payment which shall become ten (10) or more calendar days past due the applicable payment date. If any payment becomes due and payable on a Saturday, Sunday or any other day on which the Bank is closed for business, the due date shall be extended to the next business day.

To secure performance and payment of the indebtedness evidenced by the Note and the Liabilities, including any and all modifications, renewals and extensions of the Note, the Mortgagor does by these presents CONVEY, WARRANT and MORTGAGE unto the Mortgagee all of the Mortgagor's estate, right, title and interest in the Premises (defined below) and the real estate situated, lying and being in the County of Cook, and State of Illinois, legally described on Exhibit A which is attached hereto and made a part hereof ("Real Estate").

Further, the Mortgagor does hereby pledge and assign to the Mortgagee, all leases, written or verbal, rents, issues and profits of the Premises, including without limitation, all rents, issues, profits, revenues, royalties, bonuses, rights and benefits due, payable or accruing, and all deposits of money as advance rent or for security, under any and all present and future leases of the Premises, together with the right, but not the obligation, to collect, receive, demand, sue for and recover the same when due or payable. The Mortgagee by acceptance of this Mortgage agrees, as a personal covenant applicable to the Mortgagor only, and not as a limitation or condition hereof and not available to anyone other than the Mortgagor, that until a Default shall occur or an event shall occur which under the terms hereof shall give to the Mortgagee the right to foreclose this Mortgage, the Mortgagor may collect, receive and enjoy such avails.

Further, the Mortgagor and the Beneficiary do hereby expressly waive and release all rights and benefits under and by virtue of the Homestead Exemption Laws of the State of Illinois.

1. DEFINITIONS:

As used herein:

- 1.01 "Additions or Alterations" means improvements, replacements, alterations, additions, enlargements or expansions in, on or to the Premises and any improvements on the Premises.
- 1.02 "Beneficiary" as used herein shall mean the undersigned beneficiary(ies), which is (are) the sole owner(s) of one hundred percent (100%) of the beneficial interest in and power of direction over the Mortgagor, if the Mortgagor is a land trust. Each Beneficiary shall be jointly and severally liable hereunder.
- 1.03 "Closing Date" means September 30, 1998.
- 1.04 "Default" means any one or more of the following events conditions or acts, including but not limited to:
- (a) any one or more of the events, conditions or acts defined as a "Default" in the Note;
 - (b) the commencement of foreclosure proceedings or their judicial equivalent with respect to any lien or other mortgage encumbering the Premises regardless of whether or not that lien or mortgage is a Permitted Lien (defined below).
- 1.05 "Environmental Laws" means any and all laws, statutes, ordinances, rules, regulations, orders, or determinations of any federal or state governmental authority or courts, pertaining to health or the environment, in effect at any time in any and all jurisdictions in which the Mortgagor is or at any time may be doing business, or where the Premises and any other real property of the Mortgagor are located.
- 1.06 "Financing Loan Documents" means Financing Loan Documents as defined in the Note.
- 1.07 "good faith" means honesty in fact in the conduct of the transaction concerned as determined on a subjective basis.
- 1.08 "Guarantor" means any endorser, guarantor, accommodation party, pledgor of security for or surety of any of the Liabilities.
- 1.09 "Liabilities" means any and all liabilities, obligations and indebtedness of the Mortgagor and the Beneficiary under the Note and this Mortgage owing to the Mortgagee for performance and payment of any and all amounts due under the Note and this Mortgage and under any of the other Financing Loan Documents, all without relief from valuation and appraisal laws, and for any other liabilities, indebtedness or obligations of every kind and nature of the Mortgagor, the Beneficiary or any Guarantor to the Mortgagee, whether heretofore, now or hereafter owing or arising, due or payable, howsoever created, arising or evidenced, whether direct or indirect, absolute or contingent, primary or secondary, joint or several, whether existing or arising, through discount, overdraft, purchase, direct loan, by operation of law or otherwise, together with reasonable attorneys' and paralegals' fees and costs (including the cost to the Mortgagee of using internal counsel, if applicable) relating to the Mortgagee's rights, remedies and security interests hereunder, including advising the Mortgagee or drafting any documents for the Mortgagee at any time in connection with the Liabilities. Liabilities includes all of the liabilities, obligations and indebtedness of any partnership owing to the Mortgagee, created or arising by such partnership while the Mortgagor, the Beneficiary or any Guarantor may have been or may be a member of such partnership. Notwithstanding the foregoing, in no event shall the lien of this Mortgage secure outstanding Liabilities in excess of two hundred percent (200%) of the original stated principal amount of the Note and this Mortgage.
- 1.10 "Manager" means Westcon, Hindmarsh Distributors Company or any other person, corporation or entity operating or managing the Premises from time to time.
- 1.11 "Mortgagee" means TCF National Bank Illinois, and includes all the successors and assigns of the Mortgagee.

UNOFFICIAL COPY

or proceeding by any governmental authority or to any remedial obligations under any Environmental Laws;

- (d) all notices, permits, licenses or similar authorizations, if any, required to be obtained or filed in connection with the operation or use of the Premises and any other real property of the Mortgagor, including without limitation past or present treatment, storage, disposal or release of a hazardous substance or solid waste into the environment, have been duly obtained or filed, and the Mortgagor is in compliance with all such notices, permits, licenses or similar authorizations;
- (e) any hazardous substance (defined below) or solid waste generated at the Premises and at any other real property of the Mortgagor has in the past been and shall continue to be transported, treated and disposed of only by carriers maintaining valid permits under RCRA and any other Environmental Laws and only at treatment, storage and disposal facilities maintaining valid permits under RCRA and any other Environmental Laws, which carriers and facilities have been and are, to the best of the Mortgagor's knowledge, operating in compliance with such permits;
- (f) the Mortgagor and the Beneficiary have taken all steps necessary to determine and has determined that no hazardous substances or solid wastes have been disposed of or otherwise released and there has been no threatened release of hazardous substances in, on or under the Premises or in, on or under any other real property of the Mortgagor except in compliance with Environmental Laws;
- (g) the Mortgagor and the Beneficiary have taken all steps necessary to determine and has determined that no hazardous substances, hazardous facilities, pollutants or contaminants are located in, on or under the Premises or in, on or under any other real property of the Mortgagor;
- (h) the Mortgagor and the Beneficiary have no material contingent liability in connection with any release or threatened release of any hazardous substance or solid waste into the environment; and
- (i) the use which the Mortgagor or the Beneficiary makes or intends to make of the Premises and any other real property of the Mortgagor will not result in the unlawful or unauthorized disposal or other release of any hazardous substance or solid waste in, on or under the Premises or in, on or under any other real property of the Mortgagor.

The terms "hazardous substance", "release" and "threatened release" have the meanings specified in the Comprehensive Environmental, Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601 et. seq., ("CERCLA"), and the terms "solid waste" and "disposal" (or "disposed") have the meanings specified in The Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. Section 6901 et. seq., ("RCRA"); provided however, in the event either CERCLA or RCRA is amended so as to broaden the meaning of any term defined thereby, such broader meanings shall apply subsequent to the effective date of such amendment, and provided further that, to the extent the laws of any state in which the Premises and any other real property of the Mortgagor or the Beneficiary are located establish a meaning for "hazardous substance", "release", "solid waste" or "disposal" which is broader than that specified in either CERCLA or RCRA, such broader meaning shall apply with regard to the Premises and any other real property of the Mortgagor or the Beneficiary located in such State. The terms "hazardous facilities", "pollutants" or "contaminants" shall have the meanings specified in any applicable local, state or federal statute, ordinance, code or regulation.

2.03 The Mortgagor represents and the Beneficiary represents and warrants the following:

- (a) The Beneficiary is an Illinois corporation duly organized and existing in good standing under the laws of the State of Illinois and has full power and authority to enter into the transactions contemplated by the Note, this Mortgage and the other Financing Loan Documents, to execute and deliver the Note, this Mortgage and the other Financing Loan Documents and to perform as required hereunder and thereunder;

98886429 Page 4 of 19

- 1.12 "Mortgage" means TCF National Bank Illinois, Successor Trustee by merger to Garfield Ridge Trust & Savings Bank, not personally, but as Trustee u/i/a dated March 11, 1988 a/k/a Trust No. 88-3-4 and includes all persons or entities liable for the payment of the indebtedness secured hereby or any part thereof, whether or not such persons or parties shall have executed the Note or this Mortgage and shall also include all persons or entities which have executed this Mortgage for the purpose of joining in the representations, warranties, covenants and indemnifications hereunder including the Beneficiary. Each Mortgagor shall be jointly and severally obligated hereunder.
- 1.13 "Net Proceeds" means, when used with respect to any insurance award, the gross proceeds from the insurance award with respect to which that term is used remaining after payment of all expenses, including reasonable attorneys' and paralegals' fees and costs, and any expenses of the Mortgagee incurred in the collection of such gross proceeds.
- 1.14 "Permitted Liens" means as of any particular time, this Mortgage and liens for 1997 real estate taxes not yet due and subsequent years not yet due.
- 1.15 "Premises" means the commercial property located on the Real Estate together with all improvements, buildings, parking areas, tenements, hereditament, appurtenances, gas, oil, minerals, easements located on, on, over or under the Real Estate, and all types of furniture, fixtures, apparatus, machinery and equipment owned by the Mortgagor, including without limitation, all of the foregoing used to supply heat, gas, air conditioning, water, light, power, refrigeration or ventilation (whether single units or centrally controlled) and all screens, window shades, storm doors and windows, floor coverings, awnings, stoves and water heaters, whether now on or in the Premises or hereafter erected, installed or placed on or in the Premises, and whether or not physically attached to the Premises. The foregoing items are and shall be deemed a part of the Premises and a portion of the security for the Liabilities.
- 1.16 "Title Insurer" means Chicago Title Insurance Company.

2. REPRESENTATIONS AND WARRANTIES

- ** 2.01 The Mortgagor represents and the Beneficiary represents and warrants that the Mortgagor has good and marketable title to an indefeasible fee estate in the Premises, subject to no lien, charge or other encumbrance, except the Permitted Liens, and that this Mortgage is and will remain a valid and enforceable first lien on the Premises except as to enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other laws, judicial decisions or principles of equity relating to or affecting the enforcement of creditors' rights or contractual obligations generally. At the Mortgagor's own cost and without expense to the Mortgagee the Mortgagor will preserve such title, and will defend the validity and priority of this Mortgage against the claims of all other persons.
- 2.02 The Mortgagor represents and the Beneficiary represents and warrants the following:
 - (a) the Premises are not subject to the disclosure requirements of the Illinois Responsible Property Transfer Act of 1988, as amended; and the Mortgagor and the Beneficiary have complied with all requirements thereunder;
 - (b) the Premises and any other real property of the Mortgagor and the operations conducted thereon do not violate any applicable federal, state or local law, statute, ordinance, rule, regulation, order or determination of any governmental authority or any restrictive covenant or deed restriction (recorded or otherwise), including without limitation all applicable zoning ordinances, building codes, flood disaster laws and Environmental Laws; and the Mortgagor and the Beneficiary have provided the Mortgagee with a Certificate of Inspection prepared by an appropriate municipal authority or with other evidence satisfactory to the Mortgagee that the Premises comply with all zoning ordinances, building codes and any requirements with respect to licenses or permits necessary for the lawful use and operation of the Premises, and with all instruments of record affecting the Premises and the Real Estate;
 - (c) without limitation of subparagraph 2.02(b) above, the Premises and any other real property of the Mortgagor and the operations conducted thereon by the Mortgagor or any current or prior owner or operator of the Premises and any other such real property or operation, are not in violation of or subject to any existing, pending or threatened action, suit, investigation, inquiry

** All representations and undertakings of TCF NATIONAL BANK ILLINOIS, as Trustee as aforesaid and not personally are those of its beneficiaries only and no liability is assumed by or should be asserted against TCF NATIONAL BANK, ILLINOIS as a result of the signing of this

UNOFFICIAL COPY

- 98886429 Page 5 of 19
- (b) The Mortgagor is the trustee of an Illinois Land Trust ("Trust") and the Beneficiary is the sole owner(s) of one hundred percent (100%) of the beneficial interest of the Trust and has sole power of direction over the Trust. The Mortgagor is duly organized and existing in good standing under the laws of the State of Illinois and the Mortgagor and Beneficiary have full power and authority to enter into the transactions contemplated by the Note, this Mortgage and the other Financing Loan Documents, to execute and deliver the Note, this Mortgage and the other Financing Loan Documents and to perform as required hereunder and thereunder;
 - (c) Except as may have been disclosed by the Mortgagor or the Beneficiary in writing to the Mortgagee prior to the Closing Date, the Mortgagor and the Beneficiary have not made any agreement or taken any action which may cause any individual, corporation or other entity ("Broker") to become entitled to a commission or a finder's fee as a result of the Mortgagee's making the loan as evidenced by the Note ("Loan");
 - (d) All delinquent real estate taxes, levied special assessments and all special assessments levied for improvements on the Premises, which prior to the Closing Date have been authorized by any governmental unit or agency or commenced or for which a construction contract has been entered into prior to such date, have been paid or in case the amount of any such assessment is not known, an amount as required by the Title Insurer has been deposited with the Title Insurer insuring the lien of this Mortgage, in escrow in a savings account, pursuant to an escrow agreement in form and substance satisfactory to the Mortgagee;
 - (e) No UCC financing statements have been filed against the Mortgagor, the Beneficiary or the Real Estate except as will be terminated pursuant to the disbursement of the Loan or as expressly permitted in writing by the Mortgagee;
 - (f) The Mortgagor and the Beneficiary do not own any margin security, and the Loan advanced under the Note will not be used for the purpose of purchasing or carrying any margin securities or for the purpose of reducing or retiring any indebtedness which was originally incurred to purchase any margin securities, or for any other purpose not permitted by Regulation U of the Board of Governors of the Federal Reserve System; and
 - (g) There currently exists no management or other similar contract for the administration of the Premises ("Management Contract").

3. COVENANTS AND AGREEMENTS.

3.01 The Mortgagor and the Beneficiary 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, except for the Permitted Liens, free from any encumbrances, charges, security interests, liens, mechanics' liens or claims for lien;
- (c) pay when due any indebtedness which may be secured by a lien or charge on the Premises, and upon request exhibit satisfactory evidence of the discharge of such lien or charge to the Mortgagee;
- (d) complete within a reasonable time any building or buildings now or at any time in process of construction upon the Premises;
- (e) comply with all requirements of all laws or municipal ordinances with respect to the Premises and the use of the Premises;
- (f) refrain from impairing or diminishing the value of the Premises; and
- (g) not sell, transfer (except for leases in the ordinary course of business) or otherwise dispose of or encumber, pledge, assign, grant a security interest in or mortgage the

UNOFFICIAL COPY

Premises or the improvements therein or thereon without the prior written consent of the Mortgagee while any of the Liabilities remain owing to the Mortgagee.

- (h) At the Mortgagor's own cost and without expense to the Mortgagee, preserve the Mortgagor's title, and will defend the validity and priority of this Mortgage against the claims of all other persons.

3.02 The Mortgagor and the Beneficiary may, at the Mortgagor's and the Beneficiary's own expense and upon prior written consent of the Mortgagee, make from time to time any Additions or Alterations to the Premises the Mortgagor and/or the Beneficiary may deem desirable for the Mortgagor's and/or the Beneficiary's business purposes that do not in any way materially increase the risk of fire or other hazard or otherwise adversely affect the structural integrity of the Premises or substantially reduce the value of the Premises; **PROVIDED THAT** all such Additions or Alterations to the Premises shall be located wholly within the boundary lines of the Real Estate and shall be in compliance with all applicable zoning and other building ordinances. All such Additions or Alterations so made by the Mortgagor or the Beneficiary shall become a part of the Premises and shall be subject to the lien of this Mortgage. The Mortgagor and the Beneficiary will not permit any mechanics' liens, security interests, charges or other encumbrances to remain against the Premises for labor or materials furnished in connection with any Additions or Alterations, unless payment for such labor or materials is not yet due and payable; **PROVIDED, HOWEVER**, the Mortgagor or the Beneficiary may in good faith contest any mechanics' lien or other lien filed or established against the Premises, and in such event may permit the item so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom, provided that nonpayment of any such item will not materially endanger the lien of this Mortgage as to any material part of the Premises or the revenues therefrom, and that neither the Premises nor any material part thereof will be subject to loss or forfeiture as a result of the nonpayment of any such item during such period. Prior to the commencement of any such contest, the Mortgagor and the Beneficiary shall deposit with the Mortgagee an amount of cash or letter of credit acceptable to the Mortgagee and equal to at least two hundred per cent (200%) of the contested amount or with the Title Insurer whatever amount of cash or other property the Title Insurer requires to insure over such liens. While no Default exists, the Mortgagee will, at the expense of the Mortgagor and the Beneficiary, cooperate with the Mortgagor in any such contest. In the event that the Mortgagor and the Beneficiary shall fail to pay any of the foregoing items required by this Paragraph to be paid by the Mortgagor and the Beneficiary, the Mortgagee may, but shall be under no obligation to, pay the same and any amounts so advanced therefor by the Mortgagee shall become an additional obligation of the Mortgagor and the Beneficiary, together with interest thereon at a per annum rate equivalent to the Default Rate set forth in the Note. All expenditures incurred pursuant to the powers herein contained shall become a part of the Liabilities secured hereby. The Mortgagee shall not be liable to account to the Mortgagor or the Beneficiary for any action taken pursuant hereto.

3.03 The Mortgagor shall furnish, or cause to be furnished to the Mortgagee an ALTA Mortgagee's Title Policy ("Title Policy") issued by the Title Insurer showing the Mortgagor as owner of the Real Estate in fee simple. The Title Policy shall insure this Mortgage (i) in the full amount of the Loan with extended coverage, including without limitation, a 3.1 zoning endorsement, usury, environmental, location, survey, access and comprehensive endorsements and any other endorsements as may be required by the Mortgagee; and (ii) as a valid first lien on the Real Estate subject only to such exceptions, encumbrances, easements, defects and objections as are approved in writing by the Mortgagee. At the Mortgagee's discretion, the disbursement of the proceeds of the Loan may be closed in escrow and disbursement of the proceeds withheld by the Mortgagee pending the Title Insurer's issuance of the Title Policy in form and substance acceptable to the Mortgagee.

3.04 (a) The Mortgagor or the Beneficiary shall pay, when due and before any penalty attaches, all general taxes, special taxes, special assessments, water taxes or charges, drainage taxes or charges, sewer service taxes or charges, and other taxes, assessments or charges against the Premises. The Mortgagor and the Beneficiary shall, upon written request, furnish or cause to be furnished to the Mortgagee duplicate paid receipts for such taxes, assessments and charges. To prevent a Default hereunder the Mortgagor or the Beneficiary may pay in full, under protest, in the manner provided by statute, any tax, assessment or charge with the Mortgagor or the Beneficiary may desire to contest prior to such tax, assessment or charge becoming delinquent.

UNOFFICIAL COPY

- (b) The Mortgagor or the Beneficiary may, at its expense and in its own name and behalf, in good faith, contest any such taxes, assessments and other charges and, in the event of any such contest, may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom, provided during such period enforcement of any such contested item shall be effectively stayed and further provided that nonpayment of any such item will not materially endanger the lien or security interest afforded by this Mortgage as to any material part of the Premises or the revenues or receipts therefrom and that neither the Premises nor any material part thereof will be subject to loss or forfeiture as a result of the nonpayment of any such item during such period. Prior to the commencement of any such contest, the Mortgagor or the Beneficiary shall deposit with the Mortgagee an amount of cash or letter of credit acceptable to the Mortgagee and equal to at least two hundred per cent (200%) of the contested amount or such amount required by the Title Insurer in order for the Title Insurer to insure over such taxes, assessments or other charges. In the event that the Mortgagor or the Beneficiary shall fail to pay any of the foregoing items required by this Paragraph 3.04 to be paid by the Mortgagor or the Beneficiary, the Mortgagee may, but shall be under no obligation to, pay the same and any amounts so advanced therefor by the Mortgagee shall become an additional obligation of the Mortgagor and the Beneficiary, together with interest thereon at a per annum rate equivalent to the Default Rate set forth in the Note. All expenditures incurred pursuant to the powers herein contained shall become a part of the Liabilities secured hereby. The Mortgagee shall not be liable to account to the Mortgagor or the Beneficiary for any action taken pursuant hereto.

- 3.05 (a) The Mortgagor and the Beneficiary shall at all times keep the Premises continuously insured against such risks as are customarily insured against by businesses of like size and type, paying as the same become due all premiums in respect thereto, including, without limitation, all of the following:
- (i) The Mortgagor and the Beneficiary shall keep the Premises and all improvements thereon now existing or hereinafter erected insured against loss or damage resulting from fire, windstorm, lightning, vandalism, malicious damage and other hazards as may be designated by the Mortgagee under a form of fire and extended coverage insurance policy for one hundred percent (100%) of the replacement cost without a co-insurance clause and without deduction for depreciation of the Premises and improvements on the Real Estate, which coverage shall at all times be in an amount at least equal to the outstanding principal balance of the Note. All such policies shall name the Mortgagee as senior insured Mortgagee and loss payee, shall contain a standard mortgage clause, as provided in Paragraphs 3.05(c) and (d) below, in form and substance acceptable to the Mortgagee and shall be assigned to the Mortgagee as additional security for the Liabilities.
 - (ii) The Mortgagor and the Beneficiary shall provide Liability Insurance in the amounts of \$1,000,000.00 per occurrence for Bodily Injury and \$1,000,000.00 per occurrence for Property Damage, and such policy shall name the Mortgagee as an additional insured.
 - (iii) The Mortgagor shall carry and maintain comprehensive worker's compensation insurance in such amounts as required by law;
 - (iv) If steam boilers or similar equipment for the generation of steam are located in, on or about the Premises, the Mortgagor and the Beneficiary shall carry and maintain insurance against loss or damage by explosion, rupture or bursting of such equipment and appurtenances thereto, without a co-insurance clause, in an amount as the Mortgagee may require, and such policies shall contain a standard mortgage clause in form and substance acceptable to the Mortgagee.
 - (v) The Mortgagor and the Beneficiary shall maintain business interruption/loss of rents insurance in the minimum amount of an amount equal to the total of twelve (12) monthly Loan and tax reserve payments pursuant to the Note, and such policy shall contain a standard mortgage clause in form and substance acceptable to the Mortgagee.
 - (vi) The Mortgagor and the Beneficiary shall maintain builder's risk insurance including coverage under the Illinois Structural Work Act, upon any work done or materials furnished under construction contracts in the amount of one hundred percent (100%) of the insurable value of

UNOFFICIAL COPY

the contracts in the name of the Mortgagee, the Mortgagor and the contractors, as their respective interests may appear, and such policy shall contain a standard mortgage clause in form and substance acceptable to the Mortgagee.

- (vii) If the Premises are located in an area which has been identified by the Secretary of Housing and Urban Development as a flood hazard area, the Mortgagor and the Beneficiary will keep the Premises insured against loss by flood for the term of the Note in an amount equal to the lesser of the outstanding principal balance of the Note or the maximum limit of coverage available for the Premises and the buildings under the National Flood Insurance Act of 1968, and such policy shall contain a standard mortgage clause in form and substance acceptable to the Mortgagee.
- (viii) The Mortgagor and the Beneficiary shall carry and maintain such other customary insurance, in such amounts and with such customary coverages, endorsements and payee designations as may be reasonably required by the Mortgagee.
- (l) All insurance policies shall be in form and substance acceptable to the Mortgagee and shall be issued by insurance companies acceptable to the Mortgagee.
- (c) The standard mortgage clause shall name the Mortgagee as "first mortgagee" as its interest may appear, without contribution, and shall provide, among other things, that the Mortgagee shall have the right to receive loss payment from the insurer under any of the following circumstances:
 - (i) The insured's claim is denied due to the insured's acts or the insured's failure to comply with the terms of the policy, or
 - (ii) The Mortgagee has brought a foreclosure action or other similar proceeding against the Premises.
- (d) All insurance policies containing a standard mortgage clause shall also contain a waiver of subrogation endorsement in favor of the Mortgagee.
- (e) All insurance policies shall provide that the Mortgagee shall receive at least ten (10) business days' written notice prior to cancellation or non-renewal for reason of nonpayment and at least thirty (30) days' written notice prior to cancellation or non-renewal by any party for any other reason.
- (f) The Mortgagor and the Beneficiary hereby pledge, assign and shall deliver all insurance policies, including additional and renewal policies, to the Mortgagee. In case of insurance about to expire, the Mortgagor shall deliver to the Mortgagee all renewal policies at least thirty (30) days prior to the respective expiration date.
- (g) The Mortgagor shall have the right and responsibility to adjust any loss with the insurer involved and to conduct any negotiations in connection therewith; PROVIDED THAT no settlement of claim in excess of \$5,000.00 shall be effected without the prior written consent of the Mortgagee.
- (h) All Net Proceeds of insurance policies containing a standard mortgage clause shall be payable to the Mortgagee, and the Mortgagee may apply all Net Proceeds in a manner as determined in its sole discretion.
- (i) If prior to full satisfaction of the Liabilities the Premises are destroyed, in whole or in part, or are damaged by fire or other casualty, the Mortgagor shall promptly give written notice thereof to the Mortgagee.
- (j) The Mortgagor and the Beneficiary agree to review the appraised value of the Premises annually with their insurance specialist and to increase the amount of insurance as is necessary, so that at all times, the respective amounts of any such insurance shall meet the requirements of this Paragraph 3.05. The Mortgagor shall provide the Mortgagee with written evidence of such

UNOFFICIAL COPY

annual review, in form and substance acceptable to the Mortgagee, within ten (10) days thereafter.

- 3.06 Upon the request of the Mortgagee, the Mortgagor or the Beneficiary shall deliver, or cause to be delivered to the Mortgagee originals or copies, as the Mortgagee requests, of all leases of all or any portion of the Premises (with assignments of such leases in form and substance acceptable to the Mortgagee). The Mortgagor shall not, without the Mortgagee's prior written consent, procure, permit or accept any prepayment, discharge or compromise of any rent or release any tenant from any obligation (except at the termination of such tenant's lease term as specified in the lease or upon a tenant default under the lease), at any time while the Liabilities remain unpaid.
- 3.06.1 The Mortgagor and the Beneficiary shall enforce or shall cause to be enforced all leases while the Liabilities remain unpaid, and all leases shall contain provisions of subordination and attornment in favor of the Mortgagee in form and substance acceptable to the Mortgagee.
- 3.07 Any award of damages resulting from condemnation proceedings, exercise of the power of eminent domain, or the taking of the Premises for public use are hereby transferred, assigned and shall be paid to the Mortgagee; and such awards or any part thereof may be applied by the Mortgagee, after the payment of all of the Mortgagee's expenses, including reasonable attorneys' and paralegals' fees and costs, (including the cost to Mortgagee of using internal counsel, if applicable) to the reduction of the Liabilities secured hereby, and the Mortgagee is hereby authorized, on behalf and in the name of the Mortgagor, to execute and deliver valid acquittances and to appeal from any such award.
- 3.08 Notwithstanding any other provisions of this Mortgage, no sale, lease (except in the ordinary course of the operation of the Premises), mortgage, trust deed, grant by the Mortgagor of an encumbrance of any kind, conveyance, transfer of occupancy or possession, contract to sell, or transfer of the Premises, or any part thereof, or sale or transfer of ownership of any beneficial interest or power of direction in a land trust which holds title to the Premises, may be made without the prior written consent of the Mortgagee.
- 3.09 If the Mortgagee makes any payment authorized by this Mortgage relating to taxes, assessments, charges, liens, security interests or encumbrances, the Mortgagee may do so according to any bill, statement or estimate received from the appropriate party claiming such funds without inquiry into the accuracy or validity of such bill, statement or estimate or into the validity of the lien, encumbrance, security interest, tax, assessment, sale, forfeiture, tax lien or title or claim thereof.
- 3.10 (a) Unless otherwise agreed in writing, the Mortgagor and the Beneficiary agree to deposit at the place as the Mortgagee may, from time to time, in writing appoint and, in the absence of appointment then at the office of the Mortgagee commencing on the Closing Date and monthly thereafter until the Liabilities secured by this Mortgage are fully paid, tax reserve amounts which shall in the aggregate be equal to the sum of the amount of the accrued real estate taxes and assessments with respect to the Premises due and payable to the Cook County Collector when such real estate taxes and assessments are due. Notwithstanding the foregoing, if the taxes or assessments for the last ascertainable year exclude the buildings or improvements or any part thereof, now constructed or to be constructed on the Premises, then the amount of the deposits to be paid pursuant to this Paragraph 3.10 shall be based upon the reasonable estimate of the Mortgagee as to the amount of taxes and assessments which shall be levied or assessed. The deposits are to be held in trust without interest and are to be used for the payment of taxes and assessments (general and special) on the Premises next due and payable when they become due. If the funds so deposited are insufficient to pay any of the taxes or assessments (general or special) for any year when the same shall become due and payable, the Mortgagor and the Beneficiary shall, within ten (10) days after receipt of a notice and demand from the Mortgagee deposit the additional funds as may be necessary to pay such taxes and assessments (general and special). So long as no Default exists, any excess shall be applied to subsequent deposits for taxes and assessments or upon repayment of the Liabilities in full.
- 3.10 (b) Upon request by the Mortgagee, concurrent with and in addition to the deposits for general and special taxes and assessments pursuant to the terms of subparagraph 3.10 (a) hereof, the Mortgagor and the Beneficiary will deposit with the Mortgagee a sum equal to the premiums that will next become due and payable on any insurance policies required hereunder, divided by the number of payments due annually under the Note hereunder so that such payments are

UNOFFICIAL COPY

sufficient to pay the insurance premiums when they become due and payable. All sums deposited hereunder shall be held in trust without interest for the purpose of paying the insurance premiums.

- 3.10 (c) The Mortgagor and the Beneficiary shall keep and maintain all deposit accounts relating to the operation of the Premises or such other deposit accounts as agreed to by Mortgagee in writing at the Mortgagee while the Liabilities remain outstanding.
- 3.11 The Mortgagor or the Beneficiary shall keep and maintain or shall cause to be kept and maintained, at all times, full, true and accurate books of accounts, in sufficient detail to adequately and correctly reflect the results of the operation of the Premises, which books and the records relating thereto shall be open to inspection and copying by the Mortgagee or its representatives during ordinary business hours, and the Mortgagor shall furnish the Mortgagee such financial information as follows:
- (a) The Mortgagor or the Beneficiary shall submit or shall cause to be submitted to the Mortgagee on an annual basis or more frequently as the Mortgagee may request from time to time, annual financial statements, including statements of cash receipts and disbursements ("Financial Statements"), for the Premises in scope, form and substance acceptable to the Mortgagee along with a Certificate of No Default signed by an individual or entity required by the Mortgagee. The Mortgagor or the Beneficiary shall also furnish or cause to be furnished such other financial statements, financial reports and credit reports and information concerning the Mortgagor, the Beneficiary, the Premises and the lessees occupying the Premises as the Mortgagee may reasonably request, all acceptable to the Mortgagee and with such acknowledgments as the Mortgagee may specify.
 - (b) The Mortgagor and the Beneficiary shall submit or cause to be submitted to the Mortgagee on an annual basis and within one hundred twenty (120) days after the end of its fiscal or calendar year, or more frequently as the Mortgagee may request from time to time, their Financial Statements prepared by and certified as true and accurate by an individual or entity required by the Mortgagee in accordance with generally accepted accounting principles consistently applied.
 - (c) The Mortgagor and the Beneficiary shall annually submit or cause to be submitted within one hundred twenty (120) days after filing, if so requested by the Mortgagee, copies of their respective Federal income tax returns filed for the immediately preceding fiscal or calendar year.
 - (d) The Mortgagor and/or the Beneficiary shall annually submit or shall cause to be annually submitted within thirty (30) days after the end of each calendar year, or more frequently as the Mortgagee may request from time to time, a current rent roll for the Premises in form and substance acceptable to the Mortgagee, certified as true and accurate by an individual or entity required by the Mortgagee.
 - (e) The Mortgagor or the Beneficiary shall cause each Guarantor to annually submit to the Bank within one hundred twenty (120) days after the end of such Guarantor's calendar or fiscal year, as the case may be, or more frequently as the Mortgagee may request from time to time, such Guarantor's financial statement prepared by an individual or entity required by the Mortgagee in accordance with generally accepted accounting principles consistently applied and signed by such Guarantor.
- 3.12 The Mortgagor and the Beneficiary shall maintain in full force and effect their respective existing corporate, partnership or Trust existence, as the case may be, and all licenses, franchises, leases, contracts and other rights necessary to the profitable conduct of the Mortgagor's and the Beneficiary's businesses, including, without limitation, all notices, permits or licenses, if any, filed or obtained with regard to compliance with Environmental Laws. The Mortgagor and the Beneficiary shall continue in and limit their respective operations to the same general line or type of business as that presently conducted by the Mortgagor and the Beneficiary and shall comply with all applicable laws and regulations or all federal, state or local governmental authorities, including, without limitation, all Environmental Laws.
- 3.13 The Mortgagor and the Beneficiary shall cause, and shall use their best efforts to cause any and all lessees or other operators of the Premises and any other real property of the Mortgagor, to conduct their

98886429
Page 10 of 19

UNOFFICIAL COPY

respective businesses so as to comply in all material respects with all Environmental Laws; PROVIDED, HOWEVER, nothing contained in this Paragraph 3.13 shall prevent the Mortgagor from contesting, in good faith and by appropriate legal proceedings, any such laws, regulation or interpretation or application thereof; PROVIDED, FURTHER, the Mortgagor and the Beneficiary shall comply with the order of any court or other governmental body of applicable jurisdiction relating to such Environmental Laws unless the Mortgagor shall currently be prosecuting an appeal or proceedings for review and shall have secured a stay of enforcement or execution or other arrangement postponing enforcement or execution pending such appeal or proceedings for review.

- 3.14 The Mortgagor and the Beneficiary shall not permit the presence of any hazardous substances, hazardous facilities, pollutants or contaminants, including asbestos in, on or under the surface of Premises. If the Mortgagee determines at any time that asbestos exists in, on or under the Premises and may present a health hazard, or if removal of any hazardous substance from the Premises is or may be required by applicable governmental or regulatory authorities or pursuant to applicable laws or regulations, the Mortgagee may, in its sole discretion, require the removal or containment of such asbestos or any other hazardous substances at the Mortgagor's sole expense.
- 3.15 The Mortgagor and the Beneficiary shall use their best efforts to cause all lessees or other operators of the Premises or any other real property of the Mortgagor to dispose of any and all hazardous substances or solid waste generated at the Premises or such other real property only at facilities and by carriers maintaining compliance with the Environmental Laws. To the best of the Mortgagor's and the Beneficiary's knowledge, all such lessees are operating in compliance with valid permits under RCRA and any other Environmental Law, and the Mortgagor and the Beneficiary shall use their best efforts to obtain certificates of disposal from all contractors employed in connection with the transport or disposal of such hazardous substances or solid waste.
- 3.16 At the Mortgagee's request from time to time, the Mortgagor and the Beneficiary shall establish and maintain, or shall cause to be established and maintained, at their sole expense, a system to assure and monitor continued compliance with the Environmental Laws by any and all lessees and operators of the Premises and any other real property of the Mortgagor, which system shall include annual reviews of such compliance by employees or agents of the Mortgagor and the Beneficiary who are familiar with the requirements of the Environmental Laws, and at the request of the Mortgagee no more than once each year, detailed review of such compliance (the "Environmental Report") by an environmental consulting firm acceptable to the Mortgagee; PROVIDED, HOWEVER, that if any Environmental Report indicates any violation of Environmental Laws, such system shall include at the request of the Mortgagee within nine (9) months of the date of such Environmental Report, a detailed review of the status of such violation (a "Supplemental Report") by such environmental consultant. The Mortgagor and the Beneficiary shall furnish, or cause to be furnished an Environmental Report or such Supplemental Report to the Mortgagee within forty-five (45) days after the Mortgagee so requests, together with such additional information as the Mortgagee may request.
- 3.17 If the Mortgagor, or the Beneficiary or any lessees or operators of the Premises shall receive (a) any notice that any violation of any Environmental Law may have been committed or is about to be committed by the Mortgagor; (b) any notice that any administrative or judicial complaint or order has been filed or is about to be filed against the Mortgagor alleging violation of any Environmental Law or requiring the Mortgagor to take any action in connection with the release or threatened release of hazardous substances or solid waste into the environment; or (c) any notice from a federal, state, or local governmental agency, court or private party alleging that the Mortgagor may be liable or responsible for costs associated with a response to or cleanup of a release or disposal of a hazardous substance or solid waste into the environment or any damages caused thereby, including without limitation any notice that the Mortgagor is a "potentially responsible party" as defined by CERCLA, the Mortgagor or the Beneficiary shall provide the Mortgagee with a copy of such notice within ten (10) days of the Mortgagor's receipt thereof. The Mortgagor or the Beneficiary shall provide the Mortgagee with notices of the enactment or promulgation of any Environmental Law which may result in a material adverse change in their business, financial condition, or operations of the Mortgagor or the Beneficiary within fifteen (15) days after the Mortgagor or the Beneficiary obtain knowledge thereof.
- 3.18 The Mortgagor and the Beneficiary shall permit and shall cause any Manager to permit the Mortgagee or any person designated by the Mortgagee, from time to time hereafter, to call at the Mortgagor's Premises or place or places of business or any other place where the collateral (as defined in the Note)

UNOFFICIAL COPY

or any information relating thereto is kept or located during reasonable business hours, without hindrance or delay, to:

- (a) inspect, audit, check and make copies of and extracts from the Mortgagor's, the Beneficiary's or any Manager's books, records, journals, orders, receipts, correspondence and other data relating to the Mortgagor's, the Beneficiary's or any Manager's business, the Premises or to any transactions between the parties hereto and whether such items or data are maintained in accordance with the Mortgagor's, the Beneficiary's and any Manager's standard operating procedures or pursuant to this Mortgage;
- (b) verify such matters concerning the Premises as the Mortgagee may consider reasonable under the circumstances;
- (c) discuss the affairs, finances and business of the Mortgagor, the Beneficiary or any Manager; and
- (d) inspect the Premises, take soil borings and conduct any other tests or procedures at the Mortgagor's or the Beneficiary's expense and inspect any books, records, journals, orders, receipts, correspondence, notices, permits or licenses, with respect to compliance with Environmental Laws, and to determine, at the Mortgagor's or the Beneficiary's expense, whether any hazardous substances are present in, on or under the Premises or in, on or under any other real property of the Mortgagor.

The Mortgagor and the Beneficiary shall deliver to the Mortgagee, within ten (10) days of request therefor, any documents necessary to obtain records from any person maintaining such records. The Mortgagor or the Beneficiary shall pay on demand or within ten (10) days thereafter all costs and expenses incurred by the Mortgagee in acquiring information pursuant to this Paragraph 3.18, with interest thereon at a per annum rate equivalent to the Default Rate set forth in the Note. All expenditures incurred pursuant to the powers herein contained shall become a part of the Liabilities secured hereby. The Mortgagee shall not be liable to account to the Mortgagor or the Beneficiary for any action taken pursuant hereto.

- 3.19 The Mortgagor and the Beneficiary shall pay all fees and commissions of any Broker and shall indemnify and hold the Mortgagee harmless from any and all claims, suits, actions, losses, damages and expenses, including reasonable attorneys' and paralegals' fees and costs (including the cost to Mortgagee of using internal counsel, if applicable), relating to the Loan, by any Broker or other person or entity for a commission or finder's fee as a result of the Mortgagee's making the Loan. This indemnity shall survive the consummation of the transactions contemplated by the Financing Loan Documents and payment and satisfaction in full of the Liabilities.
- 3.20 The Mortgagor and the Beneficiary shall not directly or indirectly apply any part of the proceeds of the Loan to the purchasing or carrying of any "margin stock" within the meaning of Regulation U of the Board of Governors of the Federal Reserve System, or any regulations, interpretations or rulings thereunder.
- 3.21 On or before the Closing Date, the Mortgagor and the Beneficiary shall pay to the Mortgagee a total fee of \$N/A ("Fee"). The entire Fee is non-refundable.
- 3.22 The Mortgagor and the Beneficiary agree that the Loan shall not be assumed without the prior written consent of the Mortgagee. If the Mortgagee consents to any such assumption, the assuming party may be required to pay to the Mortgagee, at the time of the assumption, a fee to be determined by the Mortgagee.
- 3.23 The Mortgagor and the Beneficiary agree that any management contract entered into with any Manager after the Closing Date shall be in form and substance acceptable to the Mortgagee and shall be assigned to the Mortgagee as additional security for the Liabilities. Upon any default by the Mortgagor under the Financing Loan Documents, the Mortgagee shall have the right to terminate any such Management Contract.
- 3.24 The Mortgagee shall not assume or be deemed to assume any responsibility, liability, or obligation for any filings, payments of taxes, assessments or other charges or any other actions required to be made or

UNOFFICIAL COPY

taken (as the case may be) which have been so made or taken or which have not been made or taken with respect to the compliance with the requirements of any Environmental Law, provided, however, that in the event of the imposition or assumption for any reason whatsoever of any such responsibility, liability, or obligation, the Mortgagor and the Beneficiary agree to indemnify and hold the Mortgagee harmless from and against any and all claims; liabilities; obligations; losses; actual, consequential, indirect or punitive damages; penalties; actions; judgments; suits; costs; expenses, including without limitation reasonable attorneys' and paralegals' fees and costs (including the cost to the Mortgagee of using internal counsel, if applicable) or disbursements of any kind or nature whatsoever, including without limitation title insurance premiums, escrow, recording, survey and appraisal fees, transfer taxes and stamp taxes and any diminution in the value of the Premises, which may be imposed on, incurred by or asserted against the Mortgage or the Premises, or both, in any way relating to or arising under this Mortgage, under any of the other Financing Loan Documents or under applicable federal, state and local laws, regulations and ordinances.

4. REMEDIES UPON DEFAULT.

- 4.01 Upon or after the occurrence of a Default, at the sole election of the Mortgagee and without notice to the Mortgagor, the Mortgagee may declare all Liabilities to be immediately due and payable, and the Mortgagor shall pay all costs and expenses of the Mortgagee, including without limitation reasonable attorneys' and paralegals' fees and costs (including the cost to the Mortgagee of using internal counsel, if applicable) and expenses incurred in connection with this Mortgage and all expenses incurred in the enforcement or attempted enforcement of the Mortgagee's rights in the Premises and other costs and expenses incurred in connection with the disposal of the Premises, with interest thereon at a per annum rate equivalent to the Default Rate set forth in the Note. All expenditures incurred pursuant to the powers herein shall become a part of the Liabilities secured hereby. The Mortgagee shall not be liable to account to the Mortgagor or the Beneficiary for any action taken pursuant hereto.
- 4.02 Upon or after the occurrence of a Default, the Mortgagee may proceed to protect and enforce the Mortgagee's rights hereunder by any action at law, suit in equity or other appropriate proceedings, whether for the specific performance of any agreement contained herein, or for an injunction against the violation of any of the terms hereof, or in aid of the exercise of any power granted hereby or by law.
- 4.03 When the Liabilities shall become due, whether by acceleration or otherwise, the Mortgagee also shall have the right to foreclose the lien of this Mortgage. Upon the bringing of any suit to foreclose this Mortgage, the Mortgagee shall, as a matter of right without notice and without giving bond to the Mortgagor or anyone claiming by, under or through the Mortgagor, and without regard to the solvency or insolvency of the Mortgagor or the then value of the Premises, to the extent permitted by applicable law, be entitled to have itself appointed and become mortgagee in possession for all or any part of the Premises and the rents, issues and profits thereof, with such power as the court making such appointment shall confer, and the Mortgagor hereby consents to the appointment of the Mortgagee as such mortgagee in possession and shall not oppose any such appointment. Any such mortgagee in possession may, to the extent permitted under applicable law, without notice, enter upon and take possession of the Premises or any part thereof by force, summary proceedings, ejectment or otherwise, and may remove the Mortgagor or other persons and any and all property with respect thereto or any part thereof during the pendency of any foreclosure.
- 4.04 In any suit to foreclose the lien of this Mortgage, there shall be allowed and included as additional Liabilities in the judgment of foreclosure all expenditures and expenses which may be paid or incurred by or on behalf of the Mortgagee for reasonable attorneys' and paralegals' fees and costs (including the cost to the Mortgagee of using internal counsel, if applicable), appraisers' fees, outlays for documentary and expert evidence, stenographers' charges, publication costs and costs of procuring all abstracts of title, title searches and examinations, title insurance policies, Torrens certificates, tax and lien searches, and similar data and assurances with respect to title as the Mortgagee may in good faith deem to be necessary either to prosecute the foreclosure suit or to evidence to bidders at any foreclosure sale. All of the foregoing items, which may be expended after entry of the foreclosure judgment, may be estimated by the Mortgagee. All expenditures and expenses mentioned in this Paragraph 4.04, when incurred or paid by the Mortgagee shall become additional Liabilities secured hereby and shall be immediately due and payable, with interest thereon at a rate equivalent to the Default Rate set forth in the Note. The Mortgagee shall not be liable to account to the Mortgagor for any action taken pursuant hereto. This Paragraph 4.04, shall also apply to any expenditures or expenses incurred or paid by the Mortgagee or on behalf of the

UNOFFICIAL COPY

Mortgagee in connection with (a) any proceeding, including without limitation, probate and bankruptcy proceedings, to which the Mortgagee shall be a party, either as plaintiff, claimant or defendant, by reason of this Mortgage or any indebtedness secured hereby; (b) any preparation for the commencement of any suit for the foreclosure of this Mortgage after accrual of the right to foreclose whether or not actually commenced or preparation for the commencement of any suit to collect upon or enforce the provisions of the Note or any instrument which secures the Note after Default, whether or not actually commenced; or (c) any preparation for the defense of any threatened suit or proceeding which might affect the Premises or the security hereof, whether or not actually commenced.

4.05 The Mortgagor for itself and for all who may claim through or under the Mortgagor waives any and all right to have the property and estates comprising the Premises marshaled 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.

4.06 The proceeds of any foreclosure sale 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 the items that are mentioned in Paragraph 4.04, above; second, all other items which under the terms of this Mortgage constitute indebtedness secured by this Mortgage additional to that evidenced by the Note, with interest thereon as herein provided; third, all principal and interest remaining unpaid on the Note and the Liability (First to interest and then to principal); fourth, any surplus to the Mortgagor or the Mortgagor's legal representatives, successors or assigns, as their rights may appear.

4.07 Upon, or at any time after the filing of a complaint to foreclose this Mortgage, the court in which such suit is filed may appoint a receiver of the Premises. The receiver's appointment may be made either before or after entry of judgment of foreclosure, without notice, without regard to the solvency or insolvency of the Mortgagor at the time of application for the receiver and without regard to the then value of the Premises or whether the Premises shall be then occupied as a homestead or not. The Mortgagee may be appointed as the receiver. Such receiver shall have power to collect the rents, issues and profits of the Premises during the pendency of the foreclosure suit and, in case of an entry of judgment of foreclosure, during the full statutory period of redemption, if any, whether there be redemption or not, as well as during any further times when the Mortgagor, except for the intervention of the receiver, would be entitled to collect the rents, issues and profits. Such receiver shall also have all other powers which may be necessary or are usual for the protection, possession, control, management and operation of the Premises. The court in which the foreclosure suit is filed may from time to time authorize the receiver to apply the net income in the receiver's hands in payment in whole or in part of the indebtedness secured hereby, or secured by any judgment foreclosing this Mortgage, or any tax, special assessment or other lien or encumbrance which may be or become superior to the lien hereof or of the judgment, and the deficiency judgment against the Mortgagor or any Guarantor in case of a forfeiture sale and deficiency.

5. WAIVER OF RIGHTS OF REDEMPTION AND REINSTATEMENT.

5.01 THE MORTGAGOR AND THE BENEFICIARY HEREBY WAIVE ANY AND ALL RIGHTS OF REDEMPTION FROM SALE UNDER ANY ORDER OR JUDGEMENT OF FORECLOSURE OF THIS MORTGAGE AND ANY RIGHTS OF REINSTATEMENT PURSUANT TO THE LAWS OF THE STATE OF ILLINOIS REGARDING FORECLOSURE OF MORTGAGES, ON THE MORTGAGOR'S OWN BEHALF AND ON BEHALF OF EACH AND EVERY PERSON, EXCEPT JUDGEMENT CREDITORS OF THE MORTGAGOR, ACQUIRING ANY INTEREST IN OR TITLE TO THE PREMISES AS OF OR SUBSEQUENT TO THE DATE OF THIS MORTGAGE.

5.02 IN THE EVENT THE PREMISES IS AGRICULTURAL PROPERTY OR THE MORTGAGOR IS AN ILLINOIS CORPORATION, A FOREIGN CORPORATION LICENSED TO DO BUSINESS IN THE STATE OF ILLINOIS OR A CORPORATE TRUSTEE OF AN EXPRESS TRUST, THE MORTGAGOR HEREBY WAIVES ANY AND ALL RIGHTS OF REDEMPTION FROM SALE UNDER ANY ORDER OR JUDGEMENT OF FORECLOSURE OF THIS MORTGAGE AND ANY RIGHTS OF REINSTATEMENT PURSUANT TO THE LAWS OF THE STATE OF ILLINOIS REGARDING FORECLOSURE OF MORTGAGES, ON THE MORTGAGOR'S OWN BEHALF AND ON BEHALF OF EACH AND EVERY PERSON, EXCEPT JUDGEMENT CREDITORS OF THE MORTGAGOR, ACQUIRING ANY INTEREST

UNOFFICIAL COPY

IN OR TITLE TO THE PREMISES, AS OF OR SUBSEQUENT TO THE DATE OF THIS MORTGAGE.

- 5.03 IN THE EVENT THE PREMISES IS RESIDENTIAL PROPERTY AS DEFINED UNDER THE LAWS OF THE STATE OF ILLINOIS REGARDING FORECLOSURE OF MORTGAGES, BUT PRIOR TO THE FILING OF A COMPLAINT FOR FORECLOSURE, THE PREMISES CEASES TO QUALIFY AS RESIDENTIAL PROPERTY, THE MORTGAGOR AND THE BENEFICIARY HEREBY WAIVE ANY AND ALL RIGHTS OF REDEMPTION FROM SALE UNDER ANY ORDER OR JUDGEMENT OF FORECLOSURE OF THIS MORTGAGE AND ANY RIGHTS OF REINSTATEMENT PURSUANT TO THE LAWS OF THE STATE OF ILLINOIS REGARDING FORECLOSURE OF MORTGAGES, ON THE MORTGAGOR'S OWN BEHALF AND ON BEHALF OF EACH AND EVERY PERSON, EXCEPT JUDGEMENT CREDITORS OF THE MORTGAGOR, ACQUIRING ANY INTEREST IN OR TITLE TO THE PREMISES AS OF OR SUBSEQUENT TO THE DATE OF THIS MORTGAGE.

6. MISCELLANEOUS.

- 6.01 This Mortgage and all applicable provisions hereof shall be binding upon the Mortgagor and the Beneficiary and upon the Mortgagor's and the Beneficiary's respective heirs, estates, legal representatives, successors and assigns and all persons or parties claiming by, under or through the Mortgagor, and shall inure to the benefit of the Mortgagee and its successors and assigns.
- 6.02 All notices, certificates and other communications hereunder shall be given in accordance with the provisions of paragraph 6.05 below, directed to the appropriate party and addressed as follows:

To the Mortgagor: TCF National Bank Illinois Successor
Trustee by merger to Garfield Ridge Trust
& Savings Bank, not personally, but as
Trustee u/t/a dated March 11, 1988 a/k/a
Trust No. 88-3-4
6353 W. 55th Street
Chicago, IL. 60638

To the Beneficiary(ies) Westcor. Hindmarsh Distributors Company
11708 S. Mayfield
Worth, IL. 60482

To the Mortgagee: TCF National Bank Illinois
6353 West 55th Street
Chicago, Illinois 60638
Attn: Manager Commercial Loans

No change in address of the Mortgagor, the Beneficiary or the Mortgagee shall be effective unless set in writing to the other party at the above address.

- 6.03 The singular shall include plural, the plural shall mean the singular and use of any gender shall be applicable to all genders.
- 6.04 Time is of the essence of the Note and this Mortgage.
- 6.05 THE MORTGAGOR AND THE BENEFICIARY WAIVE PERSONAL SERVICE OF ANY AND ALL PROCESS UPON THE MORTGAGOR AND THE BENEFICIARY, AND CONSENT THAT ALL SUCH SERVICE OF PROCESS BE MADE BY U.S. MAIL OR MESSENGER OR REPUTABLE OVERNIGHT DELIVERY SERVICE DIRECTED TO THE MORTGAGOR AND THE BENEFICIARY AT THE ADDRESS SET FORTH HEREIN AND THAT SERVICE SO MADE SHALL BE DEEMED TO BE COMPLETED UPON THE EARLIER OF ACTUAL RECEIPT, DELIVERY, OR THREE (3) DAYS AFTER THE SAME SHALL HAVE BEEN POSTED TO THE MORTGAGOR AND THE BENEFICIARY.

UNOFFICIAL COPY

98886429 Page 16 of 19

- 6.06 THE MORTGAGOR AND THE BENEFICIARY WAIVE ALL RIGHTS TO TRIAL BY JURY.
- 6.07 This Mortgage and the provisions hereof may be changed, waived, discharged or terminated only in writing signed by an authorized individual on behalf of the Mortgagee and by any other party, if any, against which enforcement of the change, waiver, discharge or termination is sought.
- 6.08 The Mortgagee may, but need not, make any payment or perform any act required of the Mortgagor or the Beneficiary hereunder in any form and manner deemed expedient by the Mortgagee; and the Mortgagee may, but need not, make full or partial payments of principal or interest on any encumbrances, liens or security interests affecting the Premises, and the Mortgagee may purchase, discharge, compromise or settle any tax lien or other lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting the Premises or contest any tax or assessment. All moneys paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including reasonable attorneys' and paralegals' fees and costs, (including the cost to the Mortgagee of using internal counsel, if applicable) and any other funds advanced by the Mortgagee to protect the Premises or the lien hereof, plus reasonable compensation to the Mortgagee for each matter concerning which action herein authorized may be taken, shall be so much additional Liabilities secured hereby and shall become immediately due and payable without notice and with interest thereon at a per annum rate equivalent to the post maturity rate set forth in the Note. The Mortgagee shall not be liable to account to the Mortgagor or the Beneficiary for any action taken pursuant hereto.
- 6.09 Inaction of the Mortgagee shall never be considered as a waiver of any right accruing to the Mortgagee on account of any Default hereunder on the part of the Mortgagor or the Beneficiary.
- 6.10 The Mortgagor and the Beneficiary hereby bargain, sell, assign and set over to the Mortgagee all rents, issues and profits of the Premises which, whether before or after foreclosure, until the full and complete payment of the Liabilities hereunder, shall accrue and be owing for the use and occupation of the Premises or of any part thereof. The Mortgagor and the Beneficiary do hereby constitute and appoint the Mortgagee as their Mortgagor's attorney in fact, irrevocably in the Mortgagor's and the Beneficiary's name to receive, collect and receipt for all sums due or owing for such use, rents and occupation, as the same may accrue; and out of the amount so collected to pay and discharge all unpaid indebtedness hereby secured. The Mortgagee may enter and take possession of the Premises and manage and operate the Premises and take any action which, in the Mortgagee's judgment, is necessary or proper to conserve the value of the Premises. The Mortgagee may also take possession of, and for these purposes use, any and all personal property contained in the Premises and used by the Mortgagor and the Beneficiary in the rental or leasing of the Premises or any part thereof. All expenditures incurred pursuant to the powers herein contained shall become a part of the Liabilities secured hereby. The Mortgagee shall not be liable to account to the Mortgagor or the Beneficiary for any action taken pursuant hereto other than to account for any rents actually received by the Mortgagee.
- 6.11 No action for the enforcement of the lien or of any provision of this Mortgage shall be subject to any defense which would not be good and available to the party interposing the same in an action at law upon the Note.
- 6.12 No remedy or right of the Mortgagee hereunder shall be exclusive. Each right or remedy of the Mortgagee with respect to the Liabilities, this Mortgage or the Premises shall be in addition to every other remedy or right now or hereafter existing at law or in equity. No delay by the Mortgagee in exercising, or omitting to exercise, any remedy or right accruing on Default shall impair any such remedy or right, or shall be construed to be a waiver of any such Default, or acquiescence therein, or shall affect any subsequent Default of the same or a different nature. Every such remedy or right may be exercised concurrently or independently, and when and as often as may be deemed expedient by the Mortgagee.
- 6.13 In the event the Mortgagor is a land trustee, then this Mortgage is executed by the undersigned trustee, not personally, but as trustee in the exercise of the power and authority conferred upon and vested in it as the trustee, and insofar as the trustee is concerned, is payable only out of the trust estate which in part is securing the payment hereof, and through enforcement of the provisions of the Note and any other collateral or guaranty from time to time securing payment hereof; no personal liability shall be asserted or be enforceable against the trustee, because or in respect of this Mortgage or the making, issue or transfer thereof, all such personal liability of the trustee, if any, being expressly waived in any manner.

UNOFFICIAL COPY

COOK COUNTY CLERK'S OFFICE

98886429

Page 17 of 19

- 6.14 This Mortgage and the documents executed and delivered pursuant hereto constitute the entire agreement between the parties.
- 6.15 This Mortgage has been made, executed and delivered to the Mortgagee in Chicago, Illinois and shall be construed in accordance with the internal laws of the State of Illinois (excluding conflicts of law rules). Wherever possible, each provision of this Mortgage shall be interpreted in such manner as to be effective and valid under applicable law. If any provisions of this Mortgage are prohibited by or determined to be invalid under applicable law, such provisions shall be ineffective to the extent of such prohibitions or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Mortgage.
- 6.16 This Mortgage may be signed in any number of counterparts with the same effect as if the signatures thereto and hereto were upon the same instrument.

WITNESS the hands and seals of the Mortgagor and the Beneficiary the day and year set forth above.

Address:

6353 W. 55th Street
Chicago, IL. 60638

TCF National Bank Illinois Successor Trustee
by merger to Garfield Ridge Trust &
Savings Bank
As Trustee, AND NOT PERSONALLY
Under a Trust Agreement dated
March 11, 1988 and known as
Trust No. 88-3-4

By: Georgeon C. Lucardo
Its: Land Trust Officer ASST VICE PRESIDENT

By: Michael E. Toney
Its: VICE PRESIDENT

Westcott, Hindmarsh Distributors Company
By: [Signature]
Its: President

By: [Signature]
Its: Secretary

By: [Signature]
Its: Treasurer

BENEFICIARY(IES):

11708 S. Mayfield
Worth, IL. 60482

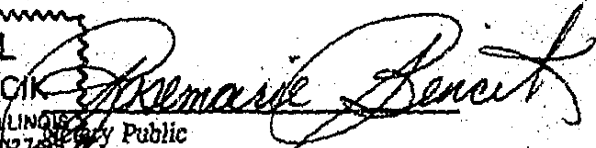
UNOFFICIAL COPY

STATE OF ILLINOIS
COUNTY OF COOK

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY that the above named officers of TCF National Bank Illinois, as aforesaid, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such title as designated above, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said Bank for the uses and purposes therein set forth, pursuant to authority given by the Board of Directors of said Bank.

GIVEN under my hand and Notarial Seal this 30th day of SEPT., 1998.

OFFICIAL SEAL
ROSEMARIE BENCIK
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES: 06/27/99
Notary Public



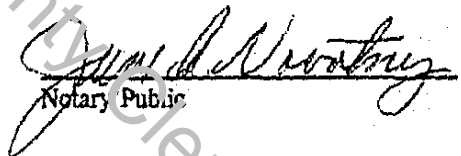
My Commission Expires: 6/27/99

STATE OF ILLINOIS
COUNTY OF COOK

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that Garrett R. Baumgarten, David A. Holl, and Donald J. Berg, personally known to me to be the same persons whose names are as President, Secretary and Treasurer, respectively, of Westcott, Hindmarsh Distributors Company, an Illinois corporation subscribed to the foregoing instrument, appeared before me this day in person and acknowledged to me that they, being thereunto duly authorized, signed and delivered said instrument as their own free and voluntary act and as the free and voluntary act of said corporation for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 27th day of September, 1998.

OFFICIAL SEAL
JUNE A NOVOTNY
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES: 02/05/02



My Commission Expires: 2/5/02

988886429

Page 18 of 19

UNOFFICIAL COPY

EXHIBIT A

98886429 Page 19 of 19

TO

MORTGAGE DATED AS OF SEPTEMBER 30, 1998

BETWEEN TCF NATIONAL BANK ILLINOIS SUCCESSOR TRUSTEE BY MERGER TO GARFIELD RIDGE TRUST & SAVINGS BANK, NOT PERSONALLY, BUT AS TRUSTEE U/T/A DATED MARCH 11, 1988 A/K/A

TRUST NO. 88-3-4

AND TCF NATIONAL BANK ILLINOIS

LEGAL DESCRIPTION

LOT 11 IN IPEMA'S 4TH ALSIP INDUSTRIAL SUBDIVISION OF THE WEST ½ OF THAT PART OF THE WEST ½ OF THE SOUTHEAST ¼ OF SECTION 20, TOWNSHIP 37 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING SOUTH OF THE NORTH 40 ACRES THEREOF AND LYING NORTH OF THE SOUTH 20 ACRES THEREOF, ALL IN COOK COUNTY, ILLINOIS.

PIN: 24-20-402-035-0000

COMMONLY KNOWN AS: 11708 S. MAYFIELD, WORTH, IL 60482

PREPARED BY AND AFTER RECORDING

MAIL TO:

CAROLYN S. PETERSON

TCF NATIONAL BANK ILLINOIS

6353 WEST 55TH STREET

CHICAGO, ILLINOIS 60638

UNOFFICIAL COPY

Property of Cook County Clerk's Office