

10/6

This instrument was prepared by  
and after recording, return to:



Raymond P. Gordon, Esq.  
Gordon & Einstein, Ltd.  
224 E. Ontario Street  
Chicago, Illinois 60611

MORTGAGE AND SECURITY AGREEMENT

This Mortgage and Security Agreement made as of this four day of April, 1998, between THE CHICAGO TRUST COMPANY, NOT INDIVIDUALLY, BUT AS SUCCESSOR TRUSTEE TO CHICAGO TITLE & TRUST COMPANY, UNDER TRUST AGREEMENT DATED JUNE 1<sup>st</sup>, 1995, AND KNOWN AS TRUST NUMBER 1101505, (hereinafter referred to as "Mortgagor") and THE FIRST COMMERCIAL BANK, an Illinois banking association, having an office at 6945 North Clark Street, Chicago, Illinois 60626 (hereinafter referred to as "Mortgagee").

WITNESSETH:

20366 safe to bin

WHEREAS, Mortgagor is justly indebted to Mortgagee in the principal sum of NINE HUNDRED SEVENTY-FIVE THOUSAND AND NO/100THS DOLLARS (\$975,000.00) as evidenced by a Promissory Note dated even date herewith executed by Mortgagor, and made payable to the order of and delivered to Mortgagee (hereinafter referred to as the "Note"), whereby Mortgagor promises to pay the said principal sum, together with interest thereon, at the rates stated therein and as changed from time to time as described therein, at the office of Mortgagee, or at such other place as may be designated in writing by the legal holders thereof, at the times stated therein, with the final payment of principal and interest to be made on May 1, 2003 at which time the principal sum secured hereby and all accrued interest thereon shall immediately become due and payable; and

WHEREAS, THOMAS L. SCHENDORF ("Beneficiary" or "Beneficial Owner") is the sole beneficiary of the aforesaid land trust of which Mortgagor is Trustee; and

WHEREAS, Mortgagor acknowledges, that this Mortgage and Security Agreement (securing, as hereinafter specified, the Note) is required by Lender as a condition precedent to making the loan evidenced by the aforesaid Note, and that it will be to the direct financial benefit of Mortgagor that said loan be made;

NOW, THEREFORE, in order to secure the payment of the said principal sum and interest thereon payable under and pursuant to the Note, Mortgagor does by these presents grant, bargain, sell, convey and mortgage unto Mortgagee, its successors and assigns forever, all of its estate, right, title and interest to the real estate, situated in the City of Chicago, County of Cook, and State of Illinois, as more particularly described in EXHIBIT "A" attached hereto and made a part hereof (sometimes herein referred to as the "real estate"), which real estate, together with the following described property, is collectively referred to as the "premises;"

TOGETHER WITH:

- a. all right, title and interest of Mortgagor, including any after-acquired title or reversion, in and to the beds of the ways, streets, avenues, vaults and alleys adjoining the premises,

20

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

- b. all and singular the tenements, hereditaments, easements, minerals, appurtenances, passages, waters, water courses, riparian irrigation, and drainage rights, and other rights, liberties and privileges thereof or in any way now or hereafter appertaining, including homestead and any other claim at law or in equity as well as any after-acquired title, franchise or license and the reversion and reversions and remainder and remainders thereof respecting the premises,
- c. all of Mortgagor's interest and rights as lessee and/or lessor in and to all leases now or hereafter affecting the real estate or any part thereof and all rents, issues, proceeds and profits accruing and to accrue from the real estate, whether payable pursuant to any present or future lease or otherwise growing out of any occupancy or use of the premises (which are pledged primarily and on a parity with the real estate, and not secondarily),
- d. all proceeds or sums payable in lieu of or as compensation for the loss of or damage to the premises, all rights in and to all present and future fire and other hazard insurance policies pertaining to the premises, subject to the provisions of Sections 4 and 11 hereof any and all sums at any time on deposit for the benefit of Mortgagee or held by Mortgagee (whether deposited by or on behalf of Mortgagor or anyone else) pursuant to any of the provisions of this Mortgage, and all awards paid or to be paid in connection with or in lieu of any condemnation, eminent domain, change of grade or similar proceeding for the taking or for the degradation in the value of all or any part of the premises, and
- e. all right, title and interest of Mortgagor in and to all buildings and improvements of every kind and description now or hereafter erected or placed thereon and all materials intended for construction, reconstruction, alteration, and repairs of such improvements now or hereafter erected thereon, all of which materials shall be deemed to be included within the premises immediately upon the delivery thereof to the premises, and all fixtures and personal property now or hereafter owned by Mortgagor and attached to or contained in and used in connection with the premises, including, but not limited to, all heating, air-conditioning, sprinklers, freezing, lighting, laundry, incinerating and dynamo and generating equipment; engines, pipes, pumps, tanks, motors, conduits, plumbing and plumbing fixtures, lifting, fire extinguishing, refrigerating, ventilating apparatus, boilers, ranges, furnaces, oil burners or units thereof, air cooling and air-conditioning apparatus, vacuum cleaning systems, elevators, escalators, shades, awnings, screens, storm doors and windows, stoves, mechanical equipment, gas and electrical fixtures, partitions, mantels, built-in mirrors, attached cabinets, ducts and compressors, and all additions thereto and renewals or replacements thereof or articles in substitution therefor, whether or not the same are or shall be attached to said building or buildings in any manner;

It being mutually agreed, intended and declared that all the aforesaid property shall, so far as permitted by law, be deemed to form a part and parcel of the real estate and for the purpose of this Mortgage to be real estate, and covered by this Mortgage, and as to any of the property aforesaid which does not so form a part and parcel of the real estate, this Mortgage is hereby deemed to be, and is, as well, a Security Agreement under the Uniform Commercial Code for the purpose of creating hereby a security interest in such property, which Mortgagor hereby grants to the Mortgagee as Secured Party (as such term is defined in the Uniform Commercial Code), it being further understood and agreed that the provisions of this paragraph shall not apply or attach to any trade fixtures or personal property of any tenant of the premises;

**TO HAVE AND TO HOLD** the same unto the Mortgagee and its successors and assigns forever, for the purposes and uses herein set forth:

**PROVIDED, HOWEVER,** that if the Mortgagor shall pay the principal and all interest as provided in the Note, and shall pay all other sums herein provided for, or secured hereby, and shall well and truly keep and perform all of the covenants herein contained, then this Mortgage shall be released at the cost of the Mortgagor, otherwise to remain in full force and effect.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

## MORTGAGOR FURTHER COVENANTS AND AGREES AS FOLLOWS:

1. Payment of Principal and Interest. Mortgagor shall pay promptly when due the principal and interest on the indebtedness evidenced by the Note at the times and in the manner herein and in the Note provided.
2. Deposits.
  - (a) Tax and Insurance Deposits. Mortgagor shall deposit with the Mortgagee, or a depository designated by Mortgagee, in addition to the monthly installments of interest due under the terms of the Note, and concurrently therewith, monthly until the principal indebtedness evidenced by the Note is paid, the following: (i) a sum equal to all real estate taxes and assessments ("taxes") next due on the premises (all as estimated by Mortgagee in its reasonable discretion), divided by the number of months to elapse before one month prior to the date when such taxes will become due and payable; and (ii) a sum equal to the amount of the premium or premiums that will next become due and payable to replace or renew the insurance policies required to be maintained by Section 4 hereof (all as estimated by Mortgagee in its reasonable discretion) divided by the number of months to elapse before one month prior to the expiration date of the policy or policies to be replaced or renewed. All such payments described in this Section 2 shall be held by Mortgagee or a depository designated by Mortgagee in trust without accruing or without any obligation arising for the payment of interest thereon. If the funds so deposited are insufficient to pay, when due, all taxes and premiums as aforesaid, the Mortgagor shall, within ten (10) days after receipt of demand therefor from Mortgagee or its agent, deposit such additional funds as may be necessary to pay such taxes and premiums. If the funds so deposited exceed the amounts required to pay such items, the excess shall be applied on a subsequent deposit or deposits. Neither the Mortgagee nor depository shall be liable for any failure to make the payments of insurance premiums, or of taxes, unless Mortgagor, while not in default hereunder, shall have requested said Mortgagee or depository in writing to make application of such deposits to the payment of the particular insurance premium or taxes, accompanied by the bills for such insurance premiums or taxes; provided, however, Mortgagee may at its option make or cause the depository to make any such application of the aforesaid deposits without any direction or request to do same by Mortgagor. Mortgagee may suspend, in whole or in part, and later reinstate, the application of this Section as often as it may determine.
  - (b) Banking Relationship. Mortgagor will maintain its principal commercial banking relationship with Mortgagee during the term of the loan evidenced by the Note.
3. Taxes and Other Charges. Subject to the provisions of Section 37 hereof, Mortgagor shall immediately pay, when first due and owing, all general taxes, special taxes, special assessments, water charges, sewer service charges, association charges, and all other charges of whatever kind, ordinary or extraordinary, whether public or private, which may be levied or imposed against the premises, and to furnish to Mortgagee official receipts therefor within thirty (30) days after payment thereof, provided, however, if Mortgagee has not suspended the monthly deposits for taxes required by Section 2 hereof, Mortgagee, at its option, either may make such deposits available to Mortgagor for the payments required under this Section 3, or may make such payments on behalf of Mortgagor. Mortgagor shall pay when due all charges incurred for the benefit of the premises for utilities, such as but not limited to, energy, fuel, gas, electricity, water, sewer and garbage removal, whether or not such charges are liens against the premises.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

## 4. Insurance.

- (a) Casualty. Mortgagor shall keep the improvements now existing or hereafter erected on the premises constantly insured against loss or damage under such types and forms of insurance policies and in such amounts and for such periods as Mortgagee may from time to time reasonably require in writing, and Mortgagor shall pay promptly, when due, any premiums on such insurance; provided, however, that if the Mortgagee has not suspended the monthly deposits for insurance required by Section 2 hereof, Mortgagee, at its option, either may make such deposits available to Mortgagor for payments required under this Subsection 4(a), or may make such payments on behalf of Mortgagor. Unless Mortgagee otherwise agrees, all such insurance shall provide "all risk" agreed value replacement cost coverage and shall be carried with companies acceptable to the Mortgagee and shall have attached thereto standard noncontributing mortgage clauses in favor of and entitling the Mortgagee alone to collect any and all of the proceeds payable under all such insurance, as well as standard waiver of subrogation endorsements. Mortgagor shall not carry separate insurance, concurrent in kind or form and contributing in the event of loss, with any insurance required hereunder. In the event of a change in ownership or of occupancy of the premises (if approved in writing by Mortgagee), immediate notice thereof by mail shall be delivered to all insurers. In the event of any loss covered by such insurance, Mortgagor shall immediately notify Mortgagee in writing, and Mortgagor hereby authorizes and directs each and every insurance company concerned to make payments for such loss directly and solely to Mortgagee (who may, but need not, make proof of loss) and Mortgagee is hereby authorized to adjust, collect and compromise in its discretion all claims under all policies, and Mortgagor shall sign, upon demand by Mortgagee, all receipts, vouchers and releases required by such insurance companies. After deducting any costs of collection, Mortgagee may use or apply the proceeds, at its option, (i) as a credit upon any portion of the indebtedness secured hereby, or (ii) to repairing and restoring the improvements in which event the Mortgagee shall not be obliged to see to the proper application thereof nor shall the amount so released or used for restoration be deemed a payment on the indebtedness secured hereby, or (iii) to deliver same to the Mortgagor. In the event Mortgagee shall elect to apply such proceeds to restoring the improvements, such proceeds shall be made available, from time to time, upon Mortgagee being furnished with satisfactory evidence of the estimated cost of such restoration and with such architect's certificates, waivers of lien, contractors' sworn statements and other evidence of cost and of payments as Mortgagee may reasonably require and approve, which approval shall not be unreasonably withheld or delayed, and if the estimated cost of the work exceeds ten percent (10%) of the original principal amount of the indebtedness secured hereby, then Mortgagor shall furnish Mortgagee with all plans and specifications for such rebuilding or restoration as Mortgagee may reasonably require and approve, which approval shall not be unreasonably withheld or delayed. No payment made prior to the final completion of the work shall exceed ninety percent (90%) of the value of the work performed, from time to time, and at all times the undisbursed balance of said proceeds remaining in the hands of Mortgagee shall be at least sufficient to pay for the cost of completion of the work, free and clear of any liens. No interest shall be allowed to Mortgagor on any proceeds of insurance paid to and held by Mortgagee. In the event of foreclosure of this Mortgage, or other transfer of title to the premises in extinguishment of the indebtedness secured hereby, all right, title and interest of Mortgagor in and to any insurance policies then in force, and any claims or proceeds thereunder, shall pass to Mortgagee or any purchaser or grantee. In the event Mortgagee, in its reasonable discretion, determines that any insurance provided by Mortgagor does not comply with the insurance requirements set forth herein, then Mortgagee may, at any time and at its own discretion, procure and substitute for any and all of the insurance so held as

UNOFFICIAL COPY

Property of Cook County Clerk's Office



# UNOFFICIAL COPY

aforesaid such other policy or policies of insurance, in such amount and carried in such company as it may determine, the cost of which shall be repaid to Mortgagee by Mortgagor upon demand. Mortgagor shall furnish to Mortgagee, upon its written request, which shall be made not more frequently than annually, estimates or appraisals of insurable value, without cost to Mortgagee, such as are regularly and ordinarily made by insurance companies to determine the then replacement cost of the building or buildings and improvements on the premises.

- (b) Liability. Mortgagor shall (or cause its tenants to) carry and maintain in force at all times comprehensive public liability insurance as may be required from time to time by Mortgagee in forms, amounts and with companies satisfactory to Mortgagee, and Mortgagor will apply all insurance proceeds under such policies to the payment and discharge of the liabilities in respect of which such proceeds are collected. It is understood and agreed that the amounts of coverage shall not be less than Three Million and No/100 Dollars (\$3,000,000.00) (\$1,000,000.00 of which may be in form of an umbrella liability policy) and that the policy shall name Mortgagee as an additional insured party thereunder.
- (c) Flood Insurance. Mortgagor shall carry and maintain in force at all times flood insurance in accordance with the provisions of the Flood Disaster Protection Act of 1973, as amended, if the area in which the premises are situated is designated as a special flood hazard area, as defined in said act, in an amount satisfactory to Mortgagee, and Mortgagor shall comply with such other requirements of said Act as are appropriate.
- (d) Performance Bonds. To the extent available, Lender shall be named as a dual obligee on all performance bonds for construction work done by subcontractors on the Premises.
- (e) Policies. Unless Mortgagee otherwise agrees, all policies of insurance required hereunder to be maintained by Mortgagor, together with evidence that the premium therefor covering a period of not less than one (1) year has been prepaid, shall be deposited with Mortgagee and shall provide for, among other things, written notice to Mortgagee of their expiration or any anticipated cancellation at least twenty (20) days prior to such event occurring. Not less than thirty (30) days prior to the expiration of any such policy, Mortgagor shall deposit an appropriate renewal or replacement policy and evidence of the premium payment therefor, as aforesaid.
5. Preservation, Restoration and Use of Premises. Mortgagor shall complete, within a reasonable time, any building or buildings or other improvements now or at any time in the process of being constructed upon the real estate. No future building or other improvement on the premises shall (except as required by law) be altered, removed or demolished nor shall any fixtures or appliances on, in or about said buildings or improvements be severed, removed, sold or mortgaged, without the prior written consent of Mortgagee (unless said fixtures or appliances are replaced promptly by similar fixtures or appliances at least equal in quality and condition), and in the event of the demolition or destruction in whole or in part of any of the fixtures, chattels or articles of personal property covered hereby or by any separate security agreement given in conjunction herewith, the same shall be replaced promptly by similar fixtures, chattels and articles of personal property at least equal in quality and condition to those replaced, free from any security interest in or encumbrances thereon or reservation of title thereto. Subject to the provisions of Section 4 hereof, Mortgagor shall promptly repair, restore or rebuild any buildings or improvements now or hereafter on the premises which may become damaged or be destroyed. The buildings and improvements shall be so restored or rebuilt so as to be of at least equal value and substantially the same character as prior to such

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

damage or destruction. Mortgagor shall not permit, commit or suffer any waste, impairment or deterioration of the premises or any part or improvement thereof, and shall keep and maintain the premises and every part thereof in good repair and condition and, from time to time, make all needful and proper replacements and additions thereto so that said buildings, fixtures, machinery and appurtenances will, at all times, be in good condition, fit and proper for the respective purposes for which they were originally erected or installed. Mortgagor shall not suffer or permit the premises to be abandoned or to be used for a purpose other than that for which the premises are authorized to be used under applicable zoning ordinance provisions in effect during the term hereof. Mortgagor shall not subject the premises to any use covenants or restrictions and shall not initiate, join in or consent to any change in any existing private restrictive covenant, zoning ordinance or other public or private restriction limiting or defining the uses which may be made of or the kind of improvements which can be constructed or placed on the premises or any part thereof, and shall promptly notify Mortgagee of, and appear in and defend, at its sole cost and expense, any such proceedings seeking to effect any of the foregoing. No improvement on the real estate or on the land adjoining the real estate which is owned or controlled by Mortgagor or a Beneficial Owner shall be constructed unless plans and specifications therefor have been first submitted to Mortgagee and approved by it, in the exercise of its reasonable judgment, as entailing no prejudice to the loan secured hereby or the security therefor.

6. Compliance with Governmental, Insurance and Other Requirements. Subject to the provisions of Section 24 (a) (ii) Mortgagor shall comply in all material respects with all statutes, ordinances, orders, requirements or decrees relating to the premises or the use thereof of any federal, state or municipal authority, and shall observe and comply with all conditions and requirements necessary to maintain in force the insurance required under Section 4 hereof and to preserve and extend any and all rights, licenses, permits (including, but not limited to, zoning variances, special exceptions and nonconforming uses), privileges, franchises and concessions which are applicable to the premises or which have been granted to or contracted for by Mortgagor in connection with any existing or presently contemplated use of the premises. In the event that any building or other improvement on the premises must be altered or removed to enable Mortgagor to comply with the foregoing provisions of this Section 6, Mortgagor shall not commence any such alterations or removals without Mortgagee's prior approval of the need therefor and the plans and specifications pertaining thereto. After such approval, which shall not be unreasonably withheld or delayed, Mortgagor, at its sole cost and expense, shall effect the alterations or removal so required and approved by Mortgagee. Mortgagor shall not by act or omission permit any building or other improvement on land not subject to the lien of this Mortgage to rely on the premises or any part thereof or any interest therein to fulfill any municipal or governmental requirement, and Mortgagor hereby assigns to Mortgagee any and all rights to give consent for all or any portion of the premises or any interest therein to be so used. Similarly, no building or other improvement on the premises shall rely on any land not subject to the lien of this Mortgage or any interest therein to fulfill any governmental or municipal requirement. Without the prior written consent of the Mortgagee, Mortgagor shall not by act or omission alter or modify the zoning of the premises. Any act or omission by Mortgagor which would result in a violation of any of the provisions of this Section shall be void. Mortgagor shall duly and punctually perform and comply with all covenants and conditions expressed as binding upon it under any recorded document or any other agreement of any nature whatsoever binding upon it which pertains to the premises.

7. Liens, Encumbrances and Transfers of Ownership.

- (a) Liens and Encumbrances. Subject to the provisions of Section 36 hereof, Mortgagor shall keep the premises free from liens of mechanics and materialmen and from all other liens, charges and encumbrances of whatever nature, except the lien of general real estate taxes and assessments that are not yet due and payable, regardless of (i)

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

whether the same arise voluntarily or involuntarily on the part of Mortgagor and (ii) whether the same are subordinate to, prior to, or on a parity with the lien of this Mortgage, and shall furnish to Mortgagee satisfactory evidence of the payment and discharge of any such liens, charges and encumbrances, asserted or claimed to exist against the premises, excepting, however any lien or encumbrance expressly consented to by Mortgagee with respect to which Mortgagor shall pay, when due, the indebtedness secured thereby and upon Mortgagee's request, furnish to Mortgagee satisfactory evidence of such payment or payments. Without in any way limiting Mortgagee's right to withhold its consent to Mortgagor hereinafter granting or creating a lien against all or any part of the premises which is subordinate to the lien hereof, any lien for which such consent is given shall be subject and subordinate to all leases pertaining to the premises whether then in existence or thereafter arising, and further subject to any and all renewals, extensions, modifications, releases, increases, changes or exchanges pertaining to the indebtedness secured hereby, without the consent of such subordinate lien holder and without any obligation to give notice of any kind thereto, regardless of whether or not expressed in such consent or in the document granting such subordinate lien.

- (b) Ownership Transfers. Mortgagor shall not, without the prior written consent of Mortgagee, sell, transfer, convey, encumber or assign the title to all or any portion of the premises, or the rents, issues or profits therefrom, whether by operation of law, voluntarily or otherwise, and shall not contract to do any of the foregoing (any such sale, transfer, conveyance, encumbrance, assignment or agreement to do any of the foregoing being herein referred to as an "Ownership Transfer"). Mortgagor acknowledges and agrees that ownership of the beneficial interest in the trust of which Mortgagor is trustee by, and the power of direction thereunder being vested in, the person or persons presently comprising the Beneficial Owner for as long as the indebtedness secured hereby remains unpaid has been a material consideration to Mortgagee in extending the credit to Mortgagor evidenced by the Note. Accordingly, Mortgagor, and by directing Mortgagor to execute this Mortgage the Beneficial Owner, each agree that the Beneficial Owner shall not, without the prior written consent of Mortgagee, transfer or assign except to Mortgagor all or any portion of such beneficial interest, or the rents, issues or profits from the premises (including, without being limited to, a collateral assignment), whether by operation of law, voluntarily or otherwise, and shall not contract to do any of the foregoing, (any such change, transfer, assignment or agreement to do so also being herein referred to as an "Ownership Transfer"); provided, however, that (i) anything in Section 24(b)(iv) to the contrary notwithstanding, Mortgagee shall have no right to enjoin or otherwise prohibit any Ownership Transfer, whether by Mortgagor or the Beneficial Owner, to which Mortgagee does not so consent (which consent Mortgagee may withhold for any reason) and, (ii) Mortgagee's rights and remedy in the event of any default hereunder resulting from any such Ownership Transfer to which Mortgagee has not so consented in accordance with the terms hereof, shall be to declare the indebtedness evidenced hereby to be immediately due and payable, as specified in Section 24(b)(i), and in the absence of payment upon such acceleration to pursue such other remedies as are specified in Section 24 hereof. Mortgagor shall give Mortgagee prior written notice of any proposed Ownership Transfer which requires Mortgagee's consent, as aforesaid, and shall furnish to Mortgagee such information concerning the proposed transaction and proposed transferee as Mortgagee may reasonably request. Without in any way limiting Mortgagee's right to withhold its consent to any proposed Ownership Transfer, Mortgagor agrees (i) that Mortgagee may require in connection with, and as a condition precedent, to granting its consent to any such proposed Ownership Transfer that the rate of interest on the unpaid balance of the indebtedness secured hereby be increased to a rate not exceeding Mortgagee's then current market rate, as specified by

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

Mortgagee, and that a transfer fee be paid in an amount specified by Mortgagee but not exceeding two percent (2%) of the then unpaid principal balance, and (ii) that in addition to any other reasons Mortgagee may have for withholding consent, such consent may be withheld if Mortgagee, in its sole discretion and judgment, decides on the basis of the general reputation, experience and financial condition of the proposed transferee, or new Beneficial Owner if said proposed transfer is to a trustee (regardless of whether or not said transferee or Beneficial Owner will assume any personal liability) that it would not in the first instance make a loan to said proposed transferee or, if a trustee, on behalf of its proposed Beneficial Owner. Mortgagor further agrees that any such Ownership Transfer, if approved by Mortgagee, shall be at no cost to Mortgagee and that Mortgagor shall pay all costs incurred by Mortgagee in connection with such Ownership Transfer, including, but not limited to, Mortgagee's attorneys' fees. Any consent by Mortgagee to one Ownership Transfer shall not be deemed a consent to any other.

8. Stamp Tax. If at any time the United States government or any state or municipal government shall require Internal Revenue or other documentary stamps hereon or on the Note secured hereby, or shall otherwise impose a tax or impose an assessment on this Mortgage or on the Note or shall require payment of an interest equalization tax upon the indebtedness secured hereby, then the said indebtedness and the accrued interest thereon shall be and become due and payable at the election of Mortgagee thirty (30) days after the mailing of notice of such election to Mortgagor; provided, however, said election shall be unavailing, and this Mortgage and the Note shall be and remain in effect, if Mortgagor lawfully may pay for such stamps or such tax including interest and penalties thereon to or on behalf of Mortgagee and Mortgagor does in fact pay, when payable, for all such stamps or such tax, as the case may be, including interest and penalties thereon.
9. Effect of Change in Laws Regarding Taxation. In the event of the enactment, after the date of this Mortgage, of any law of the state in which the premises are located deducting from the value of the land for the purpose of taxation any lien thereon, or imposing upon Mortgagee the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or Mortgagee's interest in the property, or the manner of collection of taxes, so as to affect this Mortgage or the debt secured hereby or the holder thereof, then, and in any such event, Mortgagor, upon demand by Mortgagee, shall pay such taxes or assessments, or reimburse Mortgagee therefor; provided, however, that if, in the opinion of counsel for Mortgagee, (i) it might be unlawful to require Mortgagor to make such payment or (ii) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then, and in such event, Mortgagee may elect, by notice in writing given to Mortgagor, to declare all of the indebtedness secured hereby to be and become due and payable within thirty (30) days from the giving of such notice. Notwithstanding the foregoing, Mortgagor shall not be obligated to pay any portion of Mortgagee's federal or state income tax.
10. Mortgagee's Performance of Defaulted Acts. In case of default herein, Mortgagee may, but need not, make any payment or perform any act herein required of Mortgagor in any form and manner deemed expedient by Mortgagee. By way of illustration and not in limitation of the foregoing, Mortgagee may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior or junior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting the premises or contest any tax or assessment. Mortgagee is hereby authorized to make or advance, in the place and stead of the Mortgagor, any payment relating to taxes, assessments, water rates, sewer rentals and other governmental or municipal charges, fines, impositions or liens asserted against the premises and may do so according to any bill,

UNOFFICIAL COPY

Property of Cook County Clerk's Office



# UNOFFICIAL COPY

statement or estimate procured from the appropriate public office without inquiry into the accuracy of the bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof; and the Mortgagee is further authorized to make or advance in the place and stead of the Mortgagor any payment relating to any apparent or threatened adverse title, lien, statement of lien, encumbrance, claim or charge, or payment otherwise relating to any other purpose herein and hereby authorized, but not enumerated in this Section, and may do so whenever, in its judgement and discretion, such advance or advances shall seem necessary or desirable to protect the full security intended to be created by this instrument, and in connection with any such advance, Mortgagee, at its option, may and is hereby authorized to obtain a continuation report of title or title insurance policy prepared by a title insurance company of Mortgagee's choosing. All monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including reasonable attorneys' fees, and any other monies advanced by Mortgagee to protect the premises and the lien hereof, shall be so much additional indebtedness secured hereby, and shall become immediately due and payable by Mortgagor to Mortgagee without notice and with interest thereon at the Default Interest Rate upon notice by Mortgagee to Mortgagor of the amount so expended. Inaction of Mortgagee shall never be considered as a waiver of any right accruing to it on account of any default on the part of Mortgagor. The rights granted herein shall be exercised only if Mortgagor is in default hereunder after the expiration of any applicable cure period.

11. Eminent Domain. Mortgagee is hereby authorized to collect and receive from the condemnation authorities any and all awards heretofore or hereafter made or to be made to the present and all subsequent owners of the premises, by any governmental or other lawful authority for taking, by condemnation or eminent domain, hereby assigned by Mortgagor to Mortgagee, as aforesaid, and Mortgagee is hereby authorized to give appropriate receipts and acquittances therefor. Mortgagor shall give Mortgagee immediate notice of the actual or threatened commencement of any such proceedings under condemnation or eminent domain, affecting all or any part of the said premises or any easement therein or appurtenance thereof, including severance and consequential damage and change in grade of streets, and will deliver to Mortgagee copies of any and all papers served in connection with any such proceedings. Mortgagor shall make, execute, and deliver to Mortgagee, at any time or times upon request, free, clear and discharged of any encumbrance of any kind whatsoever, any and all further assignments and instruments deemed necessary by Mortgagee for the purpose of validly and sufficiently assigning to Mortgagee all awards and other compensation heretofore and hereafter to be made to Mortgagor for any taking, either permanent or temporary, under any such proceeding. The proceeds of all such awards shall be paid to Mortgagee and may be applied by Mortgagee, at its option, after the payment of all of its expenses in connection with such proceedings, including costs and reasonable attorneys' fees, to the reduction of the indebtedness secured hereby or to restoring the improvements, in which event the same shall be paid out in the same manner as is provided, with respect to insurance proceeds, in Section 4(a) hereof. No interest shall be allowed to Mortgagor on any condemnation award paid to or held by Mortgagee.
12. Acknowledgment of Debt. Mortgagor shall furnish from time to time within seven (7) days after Mortgagee's request, a written statement, duly acknowledged, verifying the amount due upon this Mortgage (as reflected on the books and records of Mortgagee) and whether any alleged offsets or defenses exist against the indebtedness secured by this Mortgage.
13. Rents and Leases.
  - (a) Mortgagee's Right of Prior Approval. All leases of the premises are and shall be subject to the approval of Mortgagee as to form, content and tenants and, without limiting the generality of the foregoing, neither Mortgagor nor any Beneficial Owner shall, without

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

Mortgagee's prior written consent, (i) make any lease of all or any part of the premises, except for actual occupancy by the lessee thereunder, (ii) execute an assignment or pledge of any rents of the premises or of any lease of all or any part of the premises, except as security for the indebtedness secured hereby, (iii) accept any prepayment of any installment of any rent more than thirty (30) days before the due date of such installment, (iv) agree to any amendment to or change in the terms of any lease previously approved by Mortgagee which substantially reduces the rent payable thereunder or materially increases any risk or liability of the lessor.

14. Hazardous Waste and Substance; Environmental Requirement and Asbestos. Mortgagor shall:

- (a) comply with all laws, governmental standards and regulations applicable to Mortgagor or to the premises with respect to occupational health and safety, hazardous waste and substances and environmental matters (collectively "Applicable Environmental Laws"), and promptly notify Mortgagee of its receipt of any notice of a violation of any Applicable Environmental Laws, and further indemnify and hold Mortgagee harmless from all loss, cost, damage, claim and expense (including, without limitation, attorneys' fees and costs incurred in the investigation, defense and settlement of claims) incurred by Mortgagee on account of Mortgagor's violation of any Applicable Environmental Laws; and
- (b) not install or permit to be installed in the premises, friable asbestos or any substance containing asbestos and deemed hazardous by federal, state or local laws, rules, regulations or orders respecting such material (collectively "Applicable Asbestos Laws").

Mortgagor represents and warrants that to its best knowledge, after due inquiry, there is no hazardous waste or substances, or environmental condition existing on, over, or under the premises constituting, or which with the passage of time would constitute, a violation or breach of Applicable Environmental Laws or Applicable Asbestos Laws. With respect to any such material present in the premises, Mortgagor shall promptly either: (i) remove any such material deemed hazardous and required to be removed under the Applicable Environmental Laws or Applicable Asbestos Laws; or (ii) otherwise comply with the Applicable Environmental Laws or Applicable Asbestos Laws, at Mortgagor's expense. If Mortgagor shall fail to so remove or otherwise comply, Mortgagee may, after notice to Mortgagor and the expiration of the earlier of (y) the applicable cure period under the Mortgage; or (z) the cure period permitted under the Applicable Environmental Laws or Applicable Asbestos Laws, either declare the Mortgagor to be in default hereunder or do whatever is necessary to eliminate said substances from the premises or otherwise comply with the Applicable Environmental Laws or Applicable Asbestos Laws and the cost thereof incurred by Mortgagee shall be part of the indebtedness secured hereunder and shall become immediately due and payable without notice and with interest thereon at the Default Rate provided for in the Note. Mortgagor shall give to Mortgagee and its agents and employees access to the premises and hereby specifically grants to Mortgagee a license, effectively upon expiration of the applicable cure period, to remove said asbestos or substances in order to comply with the Applicable Environmental Laws or Applicable Asbestos Laws.

Mortgagor shall indemnify Mortgagee and hold Mortgagee harmless from and against all loss, cost, damage and expense (including, without limitation, attorneys' fees and costs incurred in the investigation, defense and settlement of claims) that Mortgagee may incur as a result of or in connection with the assertion against Mortgagee of any claim relating to the presence or removal of any substance referred to in this Section 14, or compliance with any of the Applicable Environmental Laws or Applicable Asbestos Laws. Mortgagor's indemnification

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

hereunder shall in all events survive the satisfaction or discharge of this Mortgage. In addition, Mortgagor acknowledges that in the event any substance is caused to be removed from the premises by Mortgagor or Mortgagee in order to comply with the Applicable Environmental Laws or Applicable Asbestos Laws, that the Environmental Protection Agency number assigned to the asbestos or substance so removed shall not be in the name of the Mortgagee, and Mortgagor shall assume all of Mortgagee's potential and actual liability for such removed asbestos. Upon Mortgagee's receipt of any information concerning a violation or alleged violation of such laws, standards, or regulations, including any matters which may be raised in any engineer's or architect's report undertaken at the request of Mortgagee, Mortgagee shall, if it so elects, order an environmental study for the premises, the cost of which shall be borne by Mortgagor. Such environmental report must be satisfactory to Mortgagee and indicate the premises are in compliance with the above requirements and not affected by hazardous wastes or substances.

15. Inspection of Books and Records. Mortgagor shall keep and maintain full and correct records showing in detail the income and expenses of the premises and within ten (10) days after demand therefor shall allow Mortgagee to examine such books and records and all supporting vouchers and data at any time during regular business hours and from time to time on request at Mortgagor's offices, hereinbefore identified, or at such other location as may be mutually agreed upon.
16. Future Advances. Mortgagee may, at its option upon request of Mortgagor, at any time before full payment of this Mortgage, make further advances to Mortgagor, and the same with interest shall be on parity with, and not subordinate to, the indebtedness evidenced by the Note and shall be secured hereby in accordance with all covenants and agreements herein contained, provided that the amount of principal secured hereby and remaining unpaid shall not, including the amount of such advances, exceed the original sum secured hereby, and provided that if Mortgagee shall make further advances as aforesaid, Mortgagor shall repay all such advances in accordance with the note or notes, or agreement or agreements, evidencing the same, which Mortgagor shall execute and deliver to Mortgagee and which shall be payable no later than the maturity of this Mortgage and shall include such other terms as Mortgagee shall require.
17. Purpose of Loan. The entire proceeds of the loan evidenced by the Note are from a "business loan", as that term is used in Section 6404(1)(c) of Chapter 17, Illinois Compiled Statutes, and Mortgagor's beneficiaries own and operate a "business" as that term is defined in said Section 6404(1)(c) of Chapter 17, Illinois Compiled Statutes.
18. Partial Invalidity. Mortgagor and Mortgagee intend and believe that each provision in this Mortgage and the Note comports with all applicable local, state and federal laws and judicial decisions. However, if any provision or provisions, or if any portion of any provision or provisions in this Mortgage or the Note is found by a court of law to be in violation of any applicable local, state or federal ordinance, statute, law, administrative or judicial decision, or public policy, and if such court should declare such portion, provision or provisions of this Mortgage or the Note to be illegal, invalid, unlawful, void or unenforceable as written, then it is the intent both of Mortgagor and Mortgagee that such portion, provision or provisions shall be given force to the fullest possible extent that it or they are legal, valid and enforceable, that the remainder of this Mortgage and the Note shall be construed as if such illegal, invalid, unlawful, void or unenforceable portion, provision or provisions were not contained therein, and that the rights, obligations and interest of Mortgagor and Mortgagee under the remainder of this Mortgage and the Note shall continue in full force and effect. If under the circumstances interest in excess of the limit allowable by law shall have been paid by Mortgagor in connection with the loan evidenced by the Note, such excess shall be applied by Mortgagee to the unpaid principal balance of the Note or refunded to Mortgagor in the manner to be determined by Mortgagee and if any such excess interest has accrued, Mortgagee shall eliminate such excess

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

interest so that under no circumstances shall interest on the loan evidenced by the Note exceed the maximum rate allowed by the law.

19. Subrogation. In the event the proceeds of the loan made by Mortgagee to Mortgagor, or any part thereof, or any amount paid out or advanced by Mortgagee, be used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any prior lien or encumbrance upon the premises or any part hereof, then Mortgagee shall be subrogated to such other lien or encumbrance and to any additional security held by the holder thereof and shall have the benefit of the priority of all of same.
20. Mortgagee's Right to Deal with Transferee. In the event of the voluntary sale, or transfer by operation of law, or otherwise, of all or any part of said premises, Mortgagee is hereby authorized and empowered to deal with such vendee or transferee with reference to said premises, or the debt secured hereby, or with reference to any of the terms or conditions hereof, as fully and to the same extent as it might with Mortgagor, without in any way releasing or discharging Mortgagor from said Mortgagor's covenants and undertakings hereunder, specifically including Section 7 hereof, and without Mortgagee waiving its rights to accelerate the Note as set forth in said Section 7.
21. Execution of Security Agreement and Financing Statement. Mortgagor, within ten (10) days after request by mail, shall execute, acknowledge and deliver to Mortgagee a Security Agreement, Financing Statement, or other similar security instrument, in form satisfactory to Mortgagee, covering all property, of any kind whatsoever owned by Mortgagor, which, in the sole opinion of Mortgagee, is essential to the operation of the premises and concerning which there may be any doubt as to whether the title to same has been conveyed by or a security interest therein perfected by this Mortgage under the laws of the State of Illinois and shall further execute, acknowledge and deliver any financing statement, affidavit, continuation statement, or certificate or other documents as Mortgagee may request in order to perfect, preserve, maintain, continue and extend the security instrument. Mortgagor further agrees to pay to Mortgagee, on demand, all reasonable costs and expenses incurred by Mortgagee in connection with the preparation, execution, recording, filing and refiling of any such document. To the extent that this instrument may operate as a security agreement under the Uniform Commercial Code, Mortgagee shall have all rights and remedies conferred therein for the benefit of a Secured Party (as said term is defined in the Uniform Commercial Code).
22. Releases. Mortgagee, without notice, and without regard to the consideration, if any, paid therefor, and notwithstanding the existence at that time of any inferior liens, may release any part of the premises or any person liable for any indebtedness secured hereby, without in any way affecting the liability of any party to the Note and this Mortgage or guaranty, if any, given as additional security for the indebtedness secured hereby and without in any way affecting the priority of the lien of this Mortgage, and may agree with any party obligated on said indebtedness herein to extend the time for payment of any part or all of the indebtedness secured hereby. Such agreement shall not, in any way, release or impair the lien created by this Mortgage, or reduce or modify the liability, if any, of any person or entity personally obligated for the indebtedness secured hereby, but shall extend the lien hereof as against the title of all parties having any interest in said security which interest is subject to the indebtedness secured by this Mortgage.
23. Expenses Incurred by Mortgagee. Any costs, damages, expenses or fees, including reasonable attorneys' fees, incurred by Mortgagee in connection with (i) sustaining the lien of this Mortgage or its priority, (ii) obtaining any commitment for title insurance or title insurance policy, (iii) protecting the premises, (iv) protecting or enforcing any of the Mortgagee's rights hereunder, (v) recovering any indebtedness secured hereby, (vi) any litigation or proceedings (including, but not limited to, bankruptcy, probate and administrative law proceedings) affecting

UNOFFICIAL COPY

Property of Cook County Clerk's Office



# UNOFFICIAL COPY

this Mortgage, the Note or the premises, or (vii) preparing for the commencement, defense or participation in any threatened litigation or proceedings as aforesaid, or as otherwise enumerated in Section 24(c) hereof, shall be so much additional indebtedness secured hereby and shall be immediately due and payable by Mortgagor, with notice, with interest thereon at the Default Interest Rate.

## 24. Remedies on Default.

(a) Events of Default. Subject to the provisions of Section 37 hereof, it shall constitute a default under this Mortgage when and (i) if any default occurs in the due and punctual payment of the entire principal sum secured hereby, or of any installment thereof, or of interest thereon, or of any installment of interest; (ii) if any default occurs in the due and punctual performance of or compliance with any other term, covenant or condition in this Mortgage, or in the Note, or in any other instrument now or hereafter evidencing or securing said indebtedness, including, without limitation, any guaranty, assignment of rents or assignment of leases given to secure such indebtedness, or (iii) if Mortgagor, any Beneficial Owner, or any guarantor of the indebtedness secured hereby (a) is voluntarily adjudicated a bankrupt or insolvent, or (b) seeks or consents to the appointment of a receiver or trustee or custodian for itself or for all or any part of its property or (c) files a petition seeking relief under or files an answer admitting the material allegations of a petition filed against it under any bankruptcy or similar laws of the United States or any state, or (d) makes a general assignment for the benefit of creditors, (e) takes any action for the purpose of effecting any of the foregoing, or (f) is generally not paying such person's debts as such debts become due, or (iv) if any order, judgment or decree is entered upon an application of a creditor of Mortgagor (as trustee, if at the time Mortgagor is a trustee), or of any Beneficial Owner, or guarantor of the indebtedness secured hereby, without the consent of the party against whom it is entered, by a court of competent jurisdiction (a) appointing a receiver or trustee or custodian of all or a substantial part of the assets of Mortgagor (as trustee if at the time Mortgagor is a trustee) or of such Beneficial Owner or guarantor, as the case may be, or (b) approving any petition filed against Mortgagor, any Beneficial Owner or any guarantor of the indebtedness secured hereby seeking relief under any bankruptcy or other similar laws of the United States or any state and remains in force, undischarged or unstayed for a period of sixty days. An event of default hereunder shall constitute an event of default under any and all instruments executed in connection with the obligation secured hereby.

(b) Remedies. In addition to any other remedy herein specified, if any default under this Mortgage shall occur, Mortgagee may, at its option, (i) declare the entire indebtedness secured hereby to be immediately due and payable, without notice or demand (each of which is hereby expressly waived by Mortgagor) whereupon the same shall become immediately due and payable, (ii) institute proceedings for the complete foreclosure of this Mortgage, (iii) institute proceedings to collect any delinquent installment or installments of the indebtedness secured hereby without accelerating the due date of the entire indebtedness by proceeding with foreclosure of this Mortgage with respect to any delinquent installment or installments of such indebtedness only and any sale of the premises under such a foreclosure proceeding shall be subject to and shall not affect the unmatured part of the indebtedness and this Mortgage shall be and continue as a lien on the premises securing the unmatured indebtedness, (iv) take such steps to protect and enforce its rights whether by action, suit or proceeding in equity or at law for the specific performance of any covenant, condition or agreement in the Note or in this Mortgage, or in aid of the execution of any power herein granted, or for any foreclosure hereunder, or for the enforcement of any other appropriate legal or equitable remedy or otherwise as Mortgagee shall elect, or (v) enforce this Mortgage

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

in any other manner permitted under the laws of the state in which the premises are situated.

- (c) Expense of Litigation. In any suit to foreclose the lien of this Mortgage or enforce any other remedy of Mortgagee under this Mortgage or the Note there shall be allowed and included, as additional indebtedness in the judgment or decree, all reasonable expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for attorneys' fees, appraiser's fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, survey costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all abstracts of title, title searches and examinations, title insurance policies, torrens certificates, and similar data and assurances with respect to title as Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or value of the premises.
- (d) Mortgagee's Right of Possession in Case of Default. In any case in which, under the provisions of this Mortgage, Mortgagee has a right to institute foreclosure proceedings whether or not the entire principal sum secured hereby is declared to be immediately due as aforesaid, or whether before or after the institution of legal proceedings to foreclose the lien hereof or before or after sale thereunder, forthwith, upon demand of Mortgagee, Mortgagor shall surrender to Mortgagee and Mortgagee shall be entitled to take actual possession of the premises, or any part thereof, personally or by its agent or attorneys, as for condition broken and Mortgagee in its discretion may enter upon and take and maintain possession of all or any part of said premises, together with all documents, books, records, papers and accounts of Mortgagor or the then manager of the premises relating thereto, and may exclude Mortgagor, its agents or servants, wholly therefrom and may, as attorney in fact or agent of Mortgagor, or in its own name as Mortgagee and under the powers herein granted: (i) hold, operate, manage and control the premises and conduct the business, if any, thereof, either personally or by its agents, and with full power to use such measures, legal or equitable, as in its discretion or in the discretion of its successors or assigns may be deemed proper or necessary to enforce the payment or security of the avails, rents, issues and profits of the premises, including actions for recovery of rent, actions in forcible detainer and actions in distress for rent, hereby granting full power and authority to exercise each and every of the rights, privileges and powers herein granted at any and all times hereafter, without notice to Mortgagor, (ii) cancel or terminate any lease or sublease for any cause or on any ground which would entitle Mortgagor to cancel the same, (iii) elect to disaffirm any lease or sublease made subsequent to this Mortgage or subordinated to the lien hereof, (iv) extend or modify any then existing leases and make new leases, which extensions, modifications and new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the indebtedness hereunder and the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor and all persons whose interests in the premises are subject to the lien hereof and to be also binding upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the mortgage indebtedness, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any purchaser, (v) make all necessary or proper repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements to the premises as to Mortgagee may seem judicious, (vi) insure and reinsure the premises and all risks incidental to Mortgagee's possession, operation and management thereof, and (vii) receive all avails, rents, issues and profits.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

- (e) Application of Rental Proceeds. Any avails, rents, issues and profits of the premises received by Mortgagee after having possession of the premises, or pursuant to any assignment thereof to Mortgagee under the provisions of this Mortgage or of any separate Assignment of Rents or Assignment of Leases, shall be applied in payment of or on account of the following, in such order as Mortgagee (or in case of a receivership, as the court) may determine: (i) to the payment of the operating expenses of the premises, including reasonable compensation to Mortgagee or the receiver and its agent or agents, if management of the premises has been delegated to an agent or agents, and shall also include lease commissions and other compensation and expenses of seeking and procuring tenants and entering into leases and the payment of premiums on insurance hereinabove authorized, (ii) to the payment of taxes, special assessments and water taxes now due or which may hereafter become due on the premises, or which may become a lien prior to the lien of this Mortgage, (iii) to the payment of all repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements of said premises, including the cost from time to time of installing or replacing personal property or fixtures necessary to the operation of the premises, and of placing said property in such condition as will, in the judgment of Mortgagee or receiver, make the premises readily rentable, (iv) to the payment of any indebtedness secured hereby or any deficiency which may result from any foreclosure sale, or (v) with respect to any overplus or remaining funds, to the Mortgagor, its successors or assigns, as their rights may appear.
- (f) Appointment of Receiver. Upon or at any time after the filing of any complaint to foreclose this Mortgage, Mortgagor consents upon application by Mortgagee to the appointment of a receiver of the premises. Such appointment may be made either before or after sale without notice and without regard to the solvency or insolvency, at the time of application for such receiver, of the person or persons, if any, liable for the payment of the indebtedness secured hereby and without regard to the then value of the premises or whether the same shall be then occupied as a homestead or not, and without bond being required of the applicant. Such receiver shall have the power to take possession, control and care of the premises and to collect the rents, issues and profits of the premises during the pendency of such foreclosure suit and, in case of a sale and a deficiency, during the full statutory period of redemption (provided that the period of redemption has not been waived by Mortgagor), as well as during any further times when Mortgagor, its heirs, administrators, executors, successors or assigns, except for the intervention of such receiver, would be entitled to collect such rents, issues and profits, and all other powers which may be necessary or are useful in such cases for the protection, possession, control, management and operation of the premises, during the whole of said period. To the extent permitted by law, said receiver may be authorized by the court to extend or modify any then existing leases and to make new leases, which extensions, modifications and new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the indebtedness hereunder it being understood and agreed that any such leases and the options or other such provisions to be contained therein, shall be binding upon Mortgagor and all persons whose interests in the premises are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the mortgage indebtedness, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any purchaser.
- (g) Sale of Premises. Any real estate or any interest or estate therein sold pursuant to any court order or decree obtained pursuant to the Mortgage shall be sold in one parcel, as an entirety, or in such parcels and in such manner or order as Mortgagee, in its sole discretion, may elect, to the maximum extent permitted by the laws of the state in

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

which the premises are situated. At any such sale, Mortgagee may bid for and acquire, as Purchaser, the premises or any part thereof, and in lieu of paying cash therefor, may make settlement for the purchase price by crediting upon the indebtedness due the amount of Mortgagee's bid.

- (h) Application of Proceeds From Foreclosure Sale. The proceeds of any foreclosure sale of the premises shall be distributed and applied in the following order of priority: (i) on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in Section 24(c) hereof, (ii) all other items which, under the terms hereof, constitute secured indebtedness additional to that evidenced by the Note, with interest thereon, at the Default Interest Rate, (iii) all principal and interest remaining unpaid on the Note, and (iv) any overplus to Mortgagor, its successors or assigns, as their rights may appear.
- (i) Application of Deposits Held by Mortgagee. With respect to any deposits made with or held by Mortgagee or any depository pursuant to any of the provisions of this Mortgage, in the event of a default in any of the provisions contained in this Mortgage or in the Note secured hereby, Mortgagee may, at its option, without being required to do so, apply any monies or securities which constitute such deposits on any of Mortgagor's obligations herein or in the Note contained, in such order and manner as Mortgagee may elect. When the indebtedness secured hereby has been fully paid, any remaining deposits shall be paid to Mortgagor or to the then owner or owners of the premises. Such deposits are hereby pledged as additional security for the prompt payment of the Note and any other indebtedness hereunder and shall be held to be irrevocably applied by the depository for the purposes for which made hereunder and shall not be subject to the direction or control of the Mortgagor.
- (j) Waiver of Statutory Rights. Mortgagor shall not apply for or avail itself of any appraisal, valuation, redemption, stay, extension or exemption laws, or any so-called "Moratorium Laws", now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but hereby waives the benefit of such laws. Mortgagor, for itself and all who may claim through or under it, waives any and all right to have the property and estates comprising the premises marshalled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the premises sold as an entirety. Mortgagor acknowledges and agrees that the land covered by this Mortgage at the time of execution hereof is not improved with a dwelling for not more than four families and that the proceeds of the loan secured hereby have not been, are not being and will not be used, in whole or in part, to finance the construction of a dwelling for not more than four families and that the land covered by this Mortgage is not used or intended to be used for agricultural purposes. Mortgagor warrants it has been authorized or empowered by the trust instrument or by a person having a power of direction over Mortgagor to, and Mortgagor does hereby waive, any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage, on behalf of Mortgagor, the trust estate, all persons beneficially interested therein, and each and every person (except decree or judgment creditors of Mortgagor in its representative capacity and of the trust estate) acquiring any interest in or title to the premises subsequent to the date hereof.
- (k) Waiver of Defenses. No action for the enforcement of the lien 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 of law upon the Note.

UNOFFICIAL COPY

Property of Cook County Clerk's Office



# UNOFFICIAL COPY

- (l) Partial Payments. Acceptance by Mortgagee of any payment which is less than payment in full of all amounts due and payable at the time of such payment shall not constitute a waiver of Mortgagee's right to exercise its option to declare the whole of the principal sum then remaining unpaid, together with all accrued interest thereon, immediately due and payable without notice, or any other rights of the Mortgagee at that time or any subsequent time, nor nullify any prior exercise of such option or such rights of Mortgagee without its express consent except and to the extent otherwise provided by law.
- (m) Tender of Payment After Acceleration. In case, after legal proceedings are instituted to foreclose the lien of this Mortgage, tender is made of the entire indebtedness due hereunder, Mortgagee shall be entitled to reimbursement for expenses incurred in connection with such legal proceedings, including such expenditures as are enumerated above, and such expenses shall be so much additional indebtedness secured by this Mortgage, and no such suit or proceedings shall be dismissed or otherwise disposed of until such fees, expenses and charges shall have been paid in full.
- (n) Delays and Omissions. No delay in the exercise of or failure to exercise any remedy or right accruing or any default under this Mortgage shall impair any such remedy or right or be construed to be a waiver of any such default or acquiescence therein, nor shall it affect any subsequent default of the same or of a different nature.
- (o) Rescission of Election. Acceleration of maturity, once made by Mortgagee, may at the option of Mortgagee be rescinded, and any proceedings brought to enforce any rights or remedies hereunder may, at Mortgagee's option, be discontinued or dismissed, whereupon, in either of such events, Mortgagor and Mortgagee shall be restored to their former positions, and the rights, remedies and power of Mortgagee shall continue as if such acceleration had not been made or such proceedings had not been commenced, as the case may be.
- (p) Remedies Cumulative and Concurrent. The rights and remedies of Mortgagee as provided in the Note, in this Mortgage and in the guaranty of any guarantor shall be cumulative and concurrent and may be pursued separately, successively or together against Mortgagor, any guarantor or the premises, or any one or more of them, at the sole discretion of Mortgagee, and may be exercised as often as occasion therefor shall arise, all to the maximum extent permitted by the laws of the state in which the premises are situated. If Mortgagee elects to proceed under one right or remedy under this Mortgage or the Note, Mortgagee may at any time cease proceeding under such right or remedy and proceed under any other right or remedy under this Mortgage or the Note.
25. Default Interest Rate. The term "Default Interest Rate" is deemed to mean interest at the rate set forth in the Note until paid.
26. Giving of Notice. All notices to Mortgagor and Mortgagee that are either required or contemplated in connection with this Mortgage shall be in writing, and shall be deemed given upon the earlier of the actual receipt thereof by the party for whom it is intended or forty-eight (48) hours after mailing the same to the party for whom it is intended at the Mortgagor's address set forth below, or to the Mortgagee's address set forth above, with postage prepaid via certified, first class mail. By notice complying with the foregoing provisions of this section, either party from time to time change its address for notice purposes, except that any such notice shall not be deemed delivered until actually received. Except as otherwise specifically required, notice of the exercise of any option granted to the Mortgagee herein, or in the Note secured hereby, is not required to be given. Notices to Mortgagor shall be directed as follows:

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

Mr. Thomas L. Schendorf  
400 North McClurg Court, Apt. 2102  
Chicago, Illinois 60611

with a copy (for informational purposes) to:

Bruce K. Huvad, Esq.  
Cohen, Salk & Huvad, P.C.  
630 Dundee Road  
Suite 120  
Northbrook, Illinois 60062

27. Time is of the Essence. It is specifically agreed that time is of the essence of this Mortgage. The waiver of the options or obligations secured hereby shall not at any time thereafter be held to be abandonment of such rights.
28. Mortgagee's Lien for Service Charge and Expenses. At all times, regardless of whether any loan proceeds have been disbursed, this Mortgage secures (in addition to any loan proceeds disbursed from time to time) the payment of any and all loan commissions, service charges, liquidated damages, expenses and advances due to or incurred by the Mortgagee in connection with this transaction.
29. Modifications. This Mortgage may not be changed, waived, discharged or terminated orally, but only by an instrument or instruments in writing, signed by the party against which enforcement of the change, waiver, discharge or termination is asserted.
30. Covenants to Run with The Land. All the covenants hereof shall run with the land.
31. Captions. The captions and headings of various sections are for convenience only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.
32. Construction. The place of contract and payment being located in Illinois, this Mortgage and the rights and indebtedness hereby secured shall be construed and enforced according to the laws of the State of Illinois.
33. Binding on Successors and Assigns, Definitions. This Mortgage and all provisions hereof shall extend and be binding upon Mortgagor's successors and assigns and all persons claiming under or through Mortgagor, and the word "Mortgagor" when used herein shall include and refer to (in addition to Mortgagor) all such persons and all persons liable for the payment of the indebtedness or any part thereof, whether or not such persons shall have executed the Note or this Mortgage. The word "Mortgagee" when used herein shall include the successors and assigns of the Mortgagee named herein, and the holder or holders, from time to time, of the Note secured hereby. Whenever used, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders. The word "person" as used herein means any natural person and any partnership, joint venture, corporation, association, or other legal entity. The phrase "Beneficial Owner", as used herein, means the person who owns, or if there be more than one, each of the persons who collectively own one hundred percent (100%) of the beneficial interest in and power of direction under the trust of which Mortgagor is trustee.
34. Further Assurances. Mortgagor shall execute, acknowledge and deliver to Mortgagee and to any subsequent holder from time to time upon demand (and pay the reasonable costs of preparation and recording thereof) any further instrument or instruments, including, but not

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

limited to, mortgages, security agreements, financing statements, assignments and renewal and substitution notes, so as to re-affirm, to correct and to perfect the evidence of the obligation hereby secured and the lien of Mortgagee to all or any part of the premises intended to be hereby mortgaged, whether now mortgaged, later substituted for, or acquired subsequent to the date of this Mortgage and extensions or modifications thereof, and will do or cause to be done all such further acts and things as may reasonably be necessary fully to effectuate the intent of this mortgage.

35. Recording and Filing. Mortgagor, at its expense, will cause this Mortgage and all supplements thereto for which constructive notice must be given to protect Mortgagee, at all times to be recorded and filed, and re-recorded and re-filed, in such manner and in such places as Mortgagee shall reasonably request, and will pay all such recording, filing, re-recording, re-filing taxes, fees and other charges to the maximum extent permitted by the laws of the state in which the premises are situated.
36. Right to Contest Taxes and Mechanics' Liens. The obligations of Mortgagor under Sections 3 and 7 hereof, and the rights of Mortgagee under Section 10 hereof, are subject to the right Mortgagor shall have to contest in good faith the validity or amount of any tax or assessment or lien arising from any work performed at or materials furnished to the premises which right, however, is conditional upon (i) such contest having the effect of preventing the collection of the tax, assessment or lien so contested and the sale or forfeiture of the premises or any part thereof or interest therein to satisfy the same, (ii) Mortgagor giving Mortgagee written notice of its intention to contest the same in a timely manner, which, with respect to any contested tax or assessment, shall mean before any such tax, assessment or lien has been increased by any penalties or costs, and with respect to any contested mechanic's lien claim, shall mean within ten (10) days after Mortgagor receives actual notice of the filing thereof, (iii) Mortgagor making and thereafter maintaining with Mortgagee or such other depository as Mortgagee may designate, a deposit of cash (or United States government securities, in discount form, or other security as may, in Mortgagee's sole discretion, be acceptable to Mortgagee, and in either case having a present value equal to the amount herein specified) in an amount not less than One Hundred Twenty-Five Percent (125%) of the amount which, in Mortgagee's reasonable opinion, determined from time to time, shall be sufficient to pay in full such contested tax, assessment or lien and penalties, costs and interest that may become due thereon in the event of a final determination thereof adverse to Mortgagor or in the event Mortgagor fails to prosecute such contest as herein required, or in lieu thereof provides title insurance or a bond reasonably acceptable to Mortgagee insuring Mortgagee against loss resulting from such contest, and (iv) Mortgagor diligently prosecuting such contest by appropriate legal proceedings. In the event Mortgagor shall fail to prosecute such contest with reasonable diligence or shall fail to maintain sufficient funds, or other security as aforesaid, on deposit as hereinabove provided, Mortgagee may, at its option, liquidate the securities deposited with Mortgagee, and apply the proceeds thereof and other monies deposited with Mortgagee in payment of, or on account of, such taxes, assessments or liens or any portion thereof then unpaid, including the payment of all penalties and interest thereon.
37. Grace Periods. Notwithstanding any provision herein or in the Note to the contrary and in the event of any default hereunder or under the terms of the Note secured hereby on the part of the Mortgagor, Mortgagee shall be entitled to enforce the remedies therefor provided only after such default shall have continued uncorrected for seven (7) days after written notice with respect to a default in the payment of any installment of principal and interest (or either of them) due under the Note or in the payment of any other monetary sum due hereunder (of which no notice shall be required) and for thirty (30) days after written notice from Mortgagee to Mortgagor with respect to any other defaults; provided, however, that if any non-monetary default is of such a nature that the same cannot be cured within said thirty (30) day period, Mortgagor shall have such additional period of time as may be necessary to prosecute such

UNOFFICIAL COPY

Property of Cook County Clerk's Office



UNOFFICIAL COPY

Property of Cook County Clerk's Office



# UNOFFICIAL COPY

## EXHIBIT B

LOTS 18, 19, 20 AND 21 IN BLOCK 15 IN NEWBERRY'S ADDITION TO CHICAGO, IN THE NORTHEAST 1/4 OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PIN: 17-09-223-003-0000

Commonly Known As: 226 West Ontario Street  
Chicago, Illinois 60610

Property of Cook County Clerk's Office

90338696

Page 21 of 21

UNOFFICIAL COPY

Property of Cook County Clerk's Office