

77-91-169

MORTGAGE

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1999-05-06 12:41:11
Cook County Recorder 45.00



THIS DOCUMENT PREPARED BY AND
AFTER RECORDING RETURN TO:
JOSEPH M. ROBINSON
MORRISSEY & ROBINSON
1301 W. 22nd Street, #401
Oak Brook, Illinois 60521

SEND SUBSEQUENT TAX
BILLS TO:

Mr. John Maka and
Mr. David Musial
5641 West 63rd Street
Chicago, Illinois 60638

Recorder's Stamp

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BWA

THIS MORTGAGE (the "Mortgage") is made as of April 16, 1999, by JOHN MAKa and DAVID MUSIAL, having an address of 5641 West 63rd Street, Chicago, Illinois 60638 (the "Borrowers"), to RICHARD S. ADAMCZYK, MARGARET M. ADAMCZYK and GARY A. BYBEE, as tenants in common, such interests respectively 25%, 25% and 50%, such individuals having an address c/o Richard S. Adamczyk, 43 North Madison, LaGrange, Illinois 60525, (the "Lenders").

Borrowers have executed and delivered to Lenders a Promissory Note (the "Note") of even date herewith payable to the order of Lenders in the principal sum of Fifty Seven Thousand Dollars and 00/100 (\$57,000.00), bearing interest and payable as set forth in the Note, and due on April 16, 2004.

In order to secure the payment of the principal indebtedness under the Note and interest and premiums on the principal indebtedness under the Note (and all replacements, renewals and extensions thereof, in whole or in part) according to its tenor, and to secure the payment of all other sums which may be at any time due under the Note or this Mortgage (collectively sometimes referred to herein as "Indebtedness"); and to secure the performance and observance of all the provisions contained in this Mortgage or the Note, and to charge the properties, interests and rights hereinafter described with such payment, performance and observance, and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Borrowers DO HEREBY MORTGAGE AND CONVEY unto Lenders, their successors and assigns forever, the following described property, rights and interests (which are referred to herein as the "Premises"), all of which property, rights and interests are hereby pledged primarily and on a parity with the Land (as hereinafter defined) and not secondarily:

THE LAND located in the State of Illinois (the "Land") and legally described and having such permanent index number and common address as follows:

LOT 17 IN BLOCK 1 IN 1ST ADDITION TO CLEARING IN SECTION 20,
TOWNSHIP 38 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL
MERIDIAN, IN COOK COUNTY, ILLINOIS.

BOX 333-CTI

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PERMANENT INDEX NUMBER: 19-20-203-006-0000

ADDRESS OF THE PREMISES: 5641 West 63rd Street, Chicago, Illinois 60638

TOGETHER WITH all improvements of every nature whatsoever now or hereafter situated on the Land, and all fixtures and personal property of every nature whatsoever now or hereafter owned by Borrowers and located on or used or intended to be used in connection with the Land or the improvements, or in connection with any construction thereon, and owned by Borrowers, and all of Borrowers' rights or payments now or hereafter made on such personal property or fixtures by Borrowers or on his behalf (the "Improvements");

TOGETHER WITH all easements, rights of way, gores of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances whatsoever, in any way now or hereafter belonging, relating or appertaining to the Land, and the reversions, remainders, rents, issues and profits thereof, and all the estate, right, title, interest, property, possession, claim and demand whatsoever, at law as well as in equity, in and to the same;

TOGETHER WITH all income from the Premises to be applied against the Indebtedness, provided, however, that Borrowers may, so long as no Default has occurred hereunder, collect income and other benefits as it becomes due.

TOGETHER WITH all proceeds of the foregoing including without limitation all judgments, awards of damages and settlements hereafter made resulting from condemnation proceeds or the taking of the Premises or any portion thereof under the power of eminent domain, any proceeds of any policies of insurance, maintained with respect to the Premises or proceeds of any sale, option or contract to sell the Premises or any portion thereof.

TO HAVE AND TO HOLD the Premises, unto the Lenders, their successors and assigns, forever, for the purposes herein set forth together with all right to possession of the Premises after the occurrence of any Default as hereinafter defined; the Borrowers hereby RELEASE AND WAIVE all rights under and by virtue of the homestead exemption laws of the State of Illinois.

Borrowers COVENANT that they are lawfully seized of the Land, and that they have lawful authority to mortgage the same, and that it will warrant and defend the Land and the quiet and peaceful possession of the same against the lawful claims of all persons whomsoever.

PROVIDED, NEVERTHELESS, that if Borrowers shall pay in full when due the Indebtedness and shall timely perform and observe all of the provisions herein and in the Note provided to be performed and observed by the Borrowers, then this Mortgage and the interest of Lenders in the Premises shall cease and become void, but shall otherwise remain in full force.

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Borrowers FURTHER AGREE AS FOLLOWS:

1. **Payment of Indebtedness and Performance of Covenants.** Borrowers shall (a) pay the Indebtedness when due and (b) punctually perform and observe all of the requirements of the Note and this Mortgage.

2. **Maintenance, Repair, Compliance with Law, Use, etc.** Borrowers shall (a) promptly repair or restore any portion of the Improvements which may become damaged or be destroyed whether or not proceeds of insurance are available or sufficient for that purpose; (b) keep the Premises in good condition and free from waste; (c) pay all operating costs of the Premises; (d) complete, within a reasonable time, any building or other Improvements at any time in the process of erection upon the Premises; (e) comply with all requirements of law relating to the Premises and the use thereof; (f) refrain from any action and correct any condition which would increase the risk of fire or other hazard to the Improvements; (g) comply with any restrictions of record with respect to the Premises; and comply with any conditions necessary to preserve and extend all rights that are applicable to the Premises; and (h) cause the Premises to be managed in a competent manner. Without the prior written consent of Lenders, Borrowers shall not cause, suffer or permit any (i) material alterations of the Premises except as required by law or except as permitted or required to be made by the terms of any Leases approved by Lenders; (ii) change in the intended use of the Premises; (iii) change in the identity of the person or firm responsible for managing the Premises; (iv) zoning reclassification with respect to the Premises; (v) unlawful use of, or nuisance to exist upon, the Premises; or (vi) granting of any easements, licenses, covenants, conditions or declarations of use against the Premises, other than use restrictions contained or provided for in Leases approved by Lenders.

3. **Liens, Prohibition.** Subject to the provisions of Paragraph 4 hereof, Borrowers shall not create or suffer or permit any encumbrance to attach to or be filed against the Premises, excepting only (i) the lien of real estate taxes and assessments not due and (ii) any liens and encumbrances of Lenders.

4. **Taxes.**

4.1. **Payment.** Borrowers shall pay when due all taxes, assessments, and charges of every kind levied or assessed against the Premises or any interest therein or any obligation or instrument secured hereby, and all installments thereof (all herein generally called "Taxes"), whether or not assessed against Borrowers, and Borrowers shall furnish to Lenders receipts therefor on or before the date the same are due; and shall discharge any claim or lien relating to Taxes upon the Premises.

4.2. **Tax Escrow.** If so requested by Lenders prior to the disbursement of the proceeds of the Note, Borrowers shall establish a tax escrow with Lenders and such escrow shall serve as a source for the payment of all regular installments of real estate taxes assessed against the Premises for such period of time as the Indebtedness remains outstanding unless directed otherwise by Lenders, the initial funding of the tax escrow shall be in the amount of \$2,240.00 with the understanding that Borrowers are to supplement the tax escrow in the amount of \$560.00 each month beginning with their regular mortgage

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payment due June 1, 1999. If at the time of payment of any installment of any real estate taxes on the Premises, it is determined by Lenders that the tax escrow has insufficient funds for any payment of taxes when due, Lenders may requisition the amount of the deficiency from Borrowers by their written notice to Borrowers and, in such event, Borrowers shall effect an additional payment to the tax escrow in accordance with the terms of such requisition. If the full year tax bill for 1998, as eventually determined, exceeds the amount of \$6,720.00, Lenders may adjust the monthly tax escrow deposit requirement of Borrowers in such amount as necessary to adequately fund the tax escrow for the timely and adequate payment of the tax installments assessed against the Premises for 1998 and subsequent years. Lenders shall apply their best efforts in the administration of the tax escrow so that the funding of the tax escrow will not exceed two-thirds of the annual real estate taxes assessed against the Premises for the most recent ascertainable tax year.

4.3. **Contest.** Borrowers may, in good faith and with reasonable diligence, contest the validity or amount of real estate taxes assessed against the Partnership provided:

4.3.1. Such contest shall prevent the collection of the Taxes so contested and the sale or forfeiture of the Premises or any part thereof or interest therein to satisfy the same;

4.3.2. Borrowers have notified Lenders in writing of the intention of Borrowers to contest the same before any Tax has been increased by any interest, penalties, or costs; and

4.3.3. Borrowers have deposited with Lenders, at such place as Lenders may from time to time in writing designate, a sum of money or other security acceptable to Lenders that is sufficient, in Lenders' judgment, to pay in full such contested Tax, including interest and penalties, and shall increase such deposit to cover additional interest and penalties whenever Lenders deem such an increase advisable.

If Borrowers fail to prosecute such contest with reasonable diligence or fail to maintain sufficient funds on deposit as hereinabove provided, Lenders may, at their option, apply the monies and liquidate any securities deposited with Lenders, in payment of, or on account of, such Taxes, or any portion thereof then unpaid, including all penalties and interest thereon. If the amount of the money and any such security so deposited is insufficient for the payment in full of such Taxes, together with all penalties and interest thereon, Borrowers shall forthwith, upon demand, either deposit with Lenders a sum that, when added to such funds then on deposit, is sufficient to make such payment in full, or, if Lenders have applied funds on deposit on account of such Taxes, restore such deposit to an amount satisfactory to Lenders. Provided that Borrowers are not then in default hereunder, Lenders shall, upon Borrowers' written request, after final disposition of such contest and upon Borrowers' delivery to Lenders of an official bill for such Taxes, apply the money so deposited in full payment of such Taxes or that part thereof then unpaid, together with penalties and interest thereon.

5. **Insurance Coverage.** Borrowers will insure the Premises against such perils and hazards, and in such amounts and with such limits, as Lenders may from time to time require, and in any event will continuously maintain the following described policies of insurance (the "Insurance Policies"):

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5.1. Casualty insurance against loss and damage by all risks of physical loss or damage, including fire, windstorm, flood, earthquake and other risks covered by the so-called extended coverage endorsement in amounts not less than the full insurable replacement value of all Improvements, fixtures and equipment from time to time on the Premises and bearing a replacement cost agreed amount endorsement;

5.2. Comprehensive public liability against death, bodily injury and property damage with such limits as Lenders may require;

6. **Insurance Policies.** All Insurance Policies shall be in form, companies and amounts reasonably satisfactory to Lenders. All Insurance Policies shall (i) include, when available, non-contributing mortgagee endorsements in favor of and with loss payable to Lenders, (ii) include standard waiver of subrogation endorsements, (iii) provide that the coverage shall not be terminated or materially modified without thirty (30) days' advance written notice to Lenders and (iv) provide that no claims shall be paid thereunder without ten (10) days' advance written notice to Lenders. Borrowers will deliver all Insurance Policies, premium prepaid, to Lenders and will deliver renewal or replacement policies at least thirty (30) days prior to the date of expiration of any policy.

7. **Assignment of Rents, Leases and Profits.** To further secure the Indebtedness, Borrowers hereby assign unto Lenders all of the rents, leases and income now or hereafter due under any Leases agreed to by Borrowers or the agents of Borrowers or which may be made or agreed to by Lenders under the powers herein granted, it being the intention hereby to establish an absolute transfer and assignment of all such Leases, rents and income thereunder, to Lenders. Borrowers hereby irrevocably appoint Lenders their attorney-in-fact (this power of attorney and any other powers of attorney granted herein are powers coupled with an interest and cannot be revoked, modified or altered without the written consent of Lenders) with or without taking possession of the Premises as provided in Paragraph 13 hereof, to lease any portion of the Premises to any party upon such terms as Lenders shall determine, and to collect all rents due under each of the Leases, with the same rights and powers and subject to the same immunities, exoneration of liability and rights of recourse and indemnity as Lenders would have upon taking possession pursuant to the provisions of Paragraph 13 hereof. Borrowers represent that no rent has been or will be paid by any person in possession of any portion of the Premises for more than one installment in advance and that the payment of none of the rents for any portion of the Premises has been or will be waived, reduced or otherwise discharged or compromised by Borrowers. Borrowers waive any right of set-off against any person in possession of any portion of the Premises. Borrowers agree that they will not assign any of the rents or profits of the Premises, except to a purchaser or grantee of the Premises. Nothing herein contained shall be construed as constituting Lenders a mortgagee in possession in the absence of the taking of actual possession of the Premises by Lenders. Borrowers expressly waive all liability of Lenders in the exercise of the powers herein granted Lenders. Borrowers shall assign to Lenders all future leases upon any part of the Premises and shall execute and deliver, at the request of Lenders, all such further assurances and assignments in the Premises as Lenders shall from time to time require. Although the assignment contained in this paragraph is a present assignment, Lenders shall not exercise any of the rights or powers conferred upon it by this paragraph until a Default shall exist under this Mortgage. Within thirty (30) days of Lenders' written demand, Borrowers will furnish Lenders with executed copies of each of the Leases and with estoppel letters from each tenant in a form satisfactory

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to Lenders. If Lenders require that Borrowers execute and record a separate collateral assignment of rents or separate assignments of any of the Leases to Lenders, the terms of those assignments shall control in the event of a conflict with the terms of this Mortgage.

8. Proceeds of Insurance. Borrowers will give Lenders prompt notice of any loss or damage to the Premises, and:

8.1. In case of loss covered by insurance policies, Lenders (or, after entry of decree of foreclosure, the purchaser at the foreclosure sale or decree creditor, as the case may be) are hereby authorized at their option either (i) to settle and adjust any claim under such policies without the consent of Borrowers, or (ii) to allow Borrowers to settle or adjust such claims; provided that Borrowers may themselves adjust losses aggregating not in excess of Twenty Five Thousand Dollars (\$25,000.00) if such adjustment is carried out in a competent and timely manner. The expenses incurred by Lenders in the adjustment and collection of insurance proceeds shall be so much additional Indebtedness and Borrowers shall reimburse Lenders for such expense upon demand.

8.2. In the event of any insured damage to the Premises (herein called an "Insured Casualty"), and if, in the reasonable judgment of Lenders, the Premises can be restored to an economic unit not less valuable than the same was prior to the Insured Casualty, then, if Borrowers shall not be in default or Default hereunder, the proceeds of insurance shall be applied to reimburse Borrowers for the cost of restoring or repairing the Premises, as provided for in Paragraph 9 hereof, and Borrowers shall diligently restore or repair the Premises; provided that Borrowers shall pay all costs of such restoring or repairing in excess of the net proceeds of insurance made available pursuant to the terms hereof.

8.3. Except as provided in Paragraph 8.2, Lenders may apply the proceeds of insurance consequent upon any Insured Casualty upon the Indebtedness in such order as Lenders may elect; provided, however, that such application of proceeds shall not be considered a voluntary prepayment of the Note which would require the payment of any prepayment premium.

8.4. Whether or not proceeds of insurance are made available to Borrowers for the restoring or repairing of the Premises, Borrowers shall restore or repair the same to be of at least equal value and of substantially the same character as prior to such damage in accordance with plans and specifications to be approved in advance by Lenders.

9. Disbursement of Insurance Proceeds. Insurance proceeds held by Lenders for restoration or repairing of the Premises shall be disbursed from time to time upon Borrowers furnishing Lenders with (i) evidence satisfactory to them of the estimated cost of the restoration or repair, (ii) funds sufficient in addition to the proceeds of insurance, to fully pay for the restoration or repair, and (iii) such architect's certificates, waivers of lien, contractor's sworn statements, title insurance endorsements, plats of survey and such other evidences of cost, payment and performance as Lenders may require and approve. No payment made prior to the final completion of the restoration or repair shall exceed ninety percent (90%) of the value of the work performed from time to time, as such value shall be determined by Lenders in their exclusive judgment; funds other than insurance proceeds shall be disbursed prior to disbursement of such proceeds; and at all times the undisbursed balance of such proceeds remaining in the hands of

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Lenders, together with funds deposited or irrevocably committed, to the satisfaction of Lenders, by or on behalf of Borrowers to pay the cost of such repair or restoration shall be at least sufficient in the reasonable judgment of Lenders to pay the entire unpaid cost of the restoration or repair free and clear of all liens or claims for lien. Any surplus of insurance proceeds held by Lenders after payment of such costs of restoration or repair shall be paid to Borrowers provided Borrowers are not in default hereunder. No interest shall be allowed to Borrowers on account of any proceeds of insurance or other funds held by Lenders.

10. **Restrictions on Transfer.** Borrowers shall not, without the prior written consent of Lenders, effect, suffer or permit any sale, assignment, or other transfer of the Land and the Improvements without the prior consent of Lenders.

11. **Default.** If one or more of the following events (herein called "Defaults") shall occur:

11.1. If Borrowers shall, after the expiration of any applicable grace periods, fail to make payments of amounts owed under the Note or this Mortgage when due;

11.2. If any default shall, after the expiration of any applicable grace periods, exist under any other document or instrument regulating, evidencing, securing or guarantying any of the Indebtedness;

11.3. If default shall continue for fifteen (15) days after notice thereof by Lenders to Borrowers in the punctual performance or observance of any other agreement or condition herein contained;

11.4. If (and for the purpose of this subparagraph 11.5 only, the term Borrowers shall mean not only Borrowers, but also any beneficiary of a trustee Borrower, any general partner in a partnership Borrower or in a partnership which is a beneficiary of a trustee Borrower, any owner of more than ten percent (10%) of the stock in a corporate Borrower or a corporation which is the beneficiary of a trustee Borrower and each person who, as guarantor, co-maker or otherwise, shall be or become liable for any part of the Indebtedness or any of the agreements contained herein).

11.4.1. Borrowers shall file a voluntary petition in bankruptcy or for relief under the Federal Bankruptcy Act or any similar state or federal law,

11.4.2. Within sixty (60) days after the filing against Borrowers of any involuntary proceeding under the Federal Bankruptcy Act or similar state or federal law, such proceedings shall not have been vacated;

11.4.3. Borrowers shall make an assignment for the benefit of creditors or shall consent to the appointment of a receiver or trustee or liquidator of all or the major part of their property, or the Premises; or

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12. **Foreclosure.** When the Indebtedness shall become due, whether by acceleration or otherwise, Lenders shall have the right to foreclose the lien hereof in accordance with the Illinois Mortgage Foreclosure Act, Ill. Rev. Stat. ch. 110, para. 15-101, *et seq.* (1987) (the "Act") and to exercise any other remedies of Lenders provided in the Note, this Mortgage, or which Lenders may have at law, at equity or otherwise. In any suit to foreclose the lien hereof, there shall be allowed and included as additional Indebtedness in the decree of sale, all expenditures and expenses which may be paid or incurred by or on behalf of Lenders for attorney's fees, appraiser's fees, outlays for documentary and expert evidence, stenographer's charges, publication costs, costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurance with respect to title as Lenders may deem reasonably necessary either to prosecute such suit or to evidence to bidders at sales which may be had pursuant to such decree the true conditions of the title to or the value of the Premises, and any other expenses and expenditures which may be paid or incurred by or on behalf of Lenders and permitted by the Act to be included in such decree. All expenditures and expenses of the nature mentioned in this Paragraph, and such other expenses and fees as may be incurred in the protection of the Premises and rents and income therefrom and the maintenance of the lien of this Mortgage, including the fees of any attorney employed by Lenders in any litigation or proceedings affecting this Mortgage, the Note or the Premises, including probate and bankruptcy proceedings, or in preparation of the commencement or defense of any proceedings or threatened suit or proceeding, or otherwise in dealing specifically therewith, shall be so much additional Indebtedness and shall be immediately due and payable by Borrowers, with interest thereon at the Default Rate until paid.

13. **Right of Possession.** When the Indebtedness shall become due, whether by acceleration or otherwise, or if Lenders have a right to institute foreclosure proceedings, Borrowers shall, forthwith upon demand of Lenders, surrender to Lenders, and Lenders shall be entitled to be placed in possession of the Premises as provided in the Act and Lenders, in their discretion and pursuant to court order, may reasonably, by their agent or attorneys, enter upon and take and maintain possession of all or any part of the Premises, together with all documents, books, records and accounts of Borrowers or the then owner of the Premises relating thereto, and may exclude Borrowers, such owner, and any agents and servants thereof wholly therefrom and may, on behalf of Borrowers or such owner, or in their own names as Lenders and under the powers herein granted:

13.1. Hold, manage, and control all or any part of the Premises and conduct the business, if any, thereof, either personally or by their agents, with full power to use such measures, legal or equitable, as in their discretion may be deemed proper or necessary to enforce the payment or security of the rents, issues, deposits, profits, and avails of the Premises;

13.2. Cancel or terminate any Lease or sublease of all or any part of the Premises for any cause or on any ground that would entitle Borrowers to cancel the same;

13.3. Extend or modify any then existing Leases and make new Leases of all or any part of the Premises, 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 loan evidenced by the Note and the issuance of a deed to a purchaser at a foreclosure sale, it being understood and agreed

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that any such Leases, and the options or other such provisions to be contained therein, shall be binding upon Borrowers, all persons whose interests in the Premises are subject to the lien hereof, and the purchaser at any foreclosure sale, notwithstanding any redemption from sale, reinstatement, discharge of the Indebtedness, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any such purchaser;

13.4. Make all necessary or proper repairs, decoration renewals, replacements, alterations, additions, betterments, and improvements in connection with the Premises as may seem judicious to Lenders, to insure and reinsure the Property and all risks incidental to Lenders' possession, operation, and management thereof, and to receive all rents, issues, deposits, profits, and avails therefrom; and

13.5. The net income, after allowing a reasonable fee for the collection thereof and for the management of the Premises, to the payment of Taxes, Premiums and other charges applicable to the Premises, or in reduction of the Indebtedness hereby secured in such order and manner as Lenders shall select.

Without limiting the generality of the foregoing, Lenders shall have all power, authority and duties as provided in the Act. Nothing herein contained shall be construed as constituting Lenders a mortgagee in possession in the absence of the actual taking of possession of the Premises.

14. **Foreclosure Sale.** Except to the extent otherwise required by the Act, the proceeds of any foreclosure sale of the Premises shall be distributed and applied in the following order of priority: First, all items which under the terms hereof constitute Indebtedness additional to the principal and interest evidenced by the Note in such order as Lenders shall elect with interest thereon as herein provided; and Second, all principal and interest remaining unpaid on the Note in such order as Lenders shall elect; and lastly any surplus to Borrowers and their successors and assigns, as their rights may appear.

15. **Waiver of Right of Redemption and Other Rights.** To the full extent permitted by law, Borrowers agree that they will not at any time or in any manner whatsoever take any advantage of any stay, exemption or extension law or any so-called "Moratorium Law" now or at any time hereafter in force, nor take any advantage of any law now or hereafter in force providing for the valuation or appraisal of the Premises, or any part thereof, prior to any sale thereof to be made pursuant to any provisions herein contained, or to any decree, judgment or order of any court of competent jurisdiction; or after such sale claim or exercise any rights under any statute now or hereafter in force to redeem the property so sold, or any part thereof, or relating to the marshaling thereof, upon foreclosure sale or other enforcement hereof. To the full extent permitted by law, Borrowers hereby expressly waive any and all rights they may have to require that the Premises be sold as separate tracts or units in the event of foreclosure. To the full extent permitted by law, Borrowers hereby expressly waive any and all rights of redemption under the Act, on their behalf, on behalf of all persons claiming or having an interest (direct or indirect) by, through or under Borrowers and on behalf of each and every person acquiring any interest in or title to the Premises subsequent to the date hereof, it being the intent hereof that any and all such rights of redemption of Borrowers and such other persons, are and shall be deemed to be hereby waived to the full extent permitted by applicable law. To the full extent permitted by law, Borrowers agree that they will not, by invoking or utilizing any applicable law or laws or otherwise, hinder, delay or impede

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the exercise of any right, power or remedy herein or otherwise granted or delegated to Lenders, but will permit the exercise of every such right, power and remedy as though no such law or laws have been or will have been made or enacted. To the full extent permitted by law, Borrowers hereby agree that no action for the enforcement of the lien or any provision hereof shall be subject to any defense which would not be good and valid in an action at law upon the Note. Borrowers acknowledge that the Premises does not constitute agricultural real estate as defined in Section 15-1201 of the Act or residential real estate as defined in Section 15-1219 of the Act.

16. **Lenders' Performance of Borrowers' Obligations.** In case of Default, either before or after acceleration of the Indebtedness or the foreclosure of the lien hereof and during the period of redemption, if any, Lenders may, but shall not be required to, make any payment or perform any act herein required of Borrowers (whether or not Borrowers are personally liable therefor) in any form and manner deemed expedient to Lenders. Lenders may, but shall not be required to, complete construction, furnishing and equipping of the Improvements and rent, operate and manage the Premises and the Improvements and pay operating costs and expenses, including management fees, of every kind and nature in connection therewith, so that the Premises shall be operational and useable for their intended purposes. All monies paid, and all expenses incurred in connection therewith, including attorneys' fees, shall be so much additional Indebtedness, whether or not the Indebtedness, as a result thereof, shall exceed the face amount of the Note, and shall become immediately due and payable on demand, and with interest thereon at the Default Rate specified in the Note (the "Default Rate"). Inaction of Lenders shall not be a waiver of any right accruing to it on account of any Default nor shall the provisions of this Paragraph or any exercise by Lenders of their rights hereunder prevent any default from constituting a Default. Lenders, in making any payment hereby authorized (a) relating to Taxes, may do so according to any bill, statement or estimate, without inquiry into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof; (b) for the purchase, discharge, compromise or settlement of any lien, may do so without inquiry as to the validity or amount of any claim for lien which may be asserted; or (c) in connection with the completion of construction, furnishing or equipping of the Premises or the rental, operation or management of the Premises or the payment of operating costs and expenses thereof, may do so in such amounts and to such persons as Lenders may deem appropriate. Nothing contained herein shall be construed to require Lenders to advance or expend monies for any purpose.

17. **Rights Cumulative.** Each right herein conferred upon Lenders is cumulative and in addition to every other right provided by law or in equity, and Lenders may exercise each such right in any manner deemed expedient to Lenders. Lenders' exercise or failure to exercise any right shall not be deemed a waiver of that right or any other right or a waiver of any default. Except as otherwise specifically required herein, Lenders are not required to give notice of their exercise of any of their right under this Mortgage.

18. **Successors and Assigns.**

18.1. **Holder of the Note.** This Mortgage and each provision hereof shall be binding upon Borrowers and their successors and assigns (including, without limitation, each and every record owner from time to time of the Premises or any other person having an interest therein), and shall inure to the benefit of Lenders and their successors and assigns. Wherever herein Lenders are referred to, such

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reference shall be deemed to include the holder from time to time of the Note; and each such holder of the Note shall have all of the rights afforded hereby and may enforce the provisions hereof, as fully as if Lenders had designated such holder of the Note herein by name.

18.2. **Covenants Run with Land; Successor Owners.** All of the covenants of this Mortgage shall run with the Land and be binding on any successor owners of the Land. If the ownership of Premises or any portion thereof becomes vested in a person other than Borrowers, Lenders may, without notice to Borrowers, deal with such person with reference to this Mortgage and the Indebtedness in the same manner as with Borrowers without in any way releasing Borrowers from their obligations hereunder. Borrowers will give immediate written notice to Lenders of any conveyance, transfer or change of ownership of the Premises, but nothing in this Paragraph shall vary the provisions of Paragraph 10 hereof.

19. **Effect of Extensions and Amendments.** If the payment of the Indebtedness be extended or varied, or if any part of the security or guaranties therefor be released, all persons at any time liable therefor, or interested in the Premises, shall be held to assent to such extension, variation or release, and their liability, and the lien, and all provisions hereof, shall continue in full force and effect; the right of recourse against all such persons being expressly reserved by Lenders, notwithstanding any such extension, variation or release. Any person, firm or corporation taking a junior mortgage, or other lien upon the Premises or any part thereof or any interest therein, shall take the said lien subject to the rights of Lenders to amend, modify, extend or release the Note, this Mortgage or any other document or instrument evidencing, securing or guarantying the Indebtedness, in each case without obtaining the consent of the holder of such junior lien and without the lien of this Mortgage losing their priority over the rights of any such junior lien.

20. **Subrogation.** If any part of the Indebtedness is used directly or indirectly to satisfy, in whole or in part, any prior encumbrance upon the Premises or any part thereof, then Lenders shall be subrogated to the rights of the holder thereof in and to such other encumbrance and any additional security held by such holder, and shall have the benefit of the priority of the same.

21. **Option to Subordinate.** At the option of Lenders, this Mortgage shall become subordinate, in whole or in part (but not with respect to priority of entitlement to insurance proceeds or any award in condemnation) to any leases of all or any part of the Premises upon the execution by Lenders and recording thereof, at any time hereafter, in the Office of the Recorder of Deeds for the county wherein the Premises are situated, of a unilateral declaration to that effect.

22. **Governing Law.** The place of negotiation, execution, and delivery of this Mortgage and the location of the Property being the State of Illinois, this Mortgage shall be construed and enforced according to the laws of that State, without reference to the conflicts of law principles of that State.

23. **Time of the Essence.** Time is of the essence of the Note, this Mortgage, and any other document or instrument evidencing or securing the Indebtedness.

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24. *Captions and Pronouns.* The captions and headings of the various sections of this Mortgage are for convenience only, and are not to be construed as limiting in any way the scope or intent of the provisions hereof. Whenever the context requires or permits, the singular shall include the plural, the plural shall include the singular, and the masculine, feminine and neuter shall be freely interchangeable.


25. *Notices.* Any notice or other communication which any party hereto may desire or may be required to give to any other party hereto shall be in writing, and shall be deemed given when (i) personally delivered, (ii) upon receipt if sent by a nationally recognized overnight courier addressed to a party at its address set forth above, or (iii) on the second business day after being deposited in United States registered or certified mail, postage prepaid, addressed to a party at its address set forth above, or to such other address as the party to receive such notice may have designated to the other party by notice in accordance herewith.

* * *

Except as otherwise specifically required herein, notice of the exercise of any right, power or option granted to Lenders by this Mortgage is not required to be given.



JOHN MAKKA



DAVID MUSIAL

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