

# UNOFFICIAL COPY

FOR RECORDERS USE ONLY

99893837

7863/0127 14 001 Page 1 of 33  
1999-09-22 12:15:55  
Cook County Recorder 85.50



99893837

## MORTGAGE AND ASSIGNMENT OF LEASES AND RENTS

THIS MORTGAGE AND ASSIGNMENT OF LEASES AND RENTS is made as of the 10<sup>th</sup> day of June, 1999, by **LASALLE BANK NATIONAL ASSOCIATION** (formerly known as LaSalle National Bank), not personally but solely as Trustee under a Trust Agreement dated December 7, 1993, and known as Trust No. 118480 (the "Trust"), and **JAVO-MEX CORPORATION**, an Illinois corporation and the sole beneficiary of the Trust ("Borrower") (the Trust and Borrower are hereinafter referred to jointly as the "Obligors"), to and for the benefit of **LASALLE BANK NATIONAL ASSOCIATION**, a national banking association (formerly known as LaSalle National Bank) ("Lender"):

### RECITALS.

A. Lender has agreed to make certain loans available to Borrower (collectively, the "Loan"), pursuant to and subject to the terms, provision and conditions set forth in that certain Loan Agreement of even date herewith (the "Loan Agreement") by and between Borrower and Lender. All capitalized terms used herein and not otherwise defined shall have the meanings ascribed thereto in the Loan Agreement.

B. A condition precedent to Lender's extension of the Loans to Borrower is the execution and delivery by the Obligors of this Mortgage.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each Obligor agrees as follows:

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

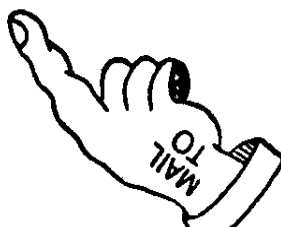
**LASALLE BANK NATIONAL ASSOCIATION**  
3201 N. ASHLAND AVE.  
CHICAGO, IL 60657  
ATTN: MARY HADDAD-HOMSY

\_\_\_\_\_  
Permanent Real Estate Tax Index Nos.:

\_\_\_\_\_  
**SEE EXHIBIT A ATTACHED**  
\_\_\_\_\_

\_\_\_\_\_  
Common Address:

\_\_\_\_\_  
**SEE EXHIBIT A ATTACHED HERETO**  
\_\_\_\_\_



S-4  
P-33  
N  
M-4  
RW

Each Obligor hereby mortgages, grants, assigns, remises, releases, warrants and conveys to Lender, its successors and assigns, the real estate legally described on Exhibit A attached hereto (the "Real Estate"), including all rights, interests and privileges appertaining to land beneath the surface and all air rights to space above the surface, together with the other property described in the following paragraph (the Real Estate and such other property being hereinafter referred to as the "Premises") to secure: (i) the payment of the Loans and all interest, late charges and other indebtedness evidenced by or owing under the Loan Documents and by any extensions, modifications, renewals or refinancings thereof; (ii) the performance and observance of the covenants, conditions, agreements, representations, warranties and other liabilities and obligations of Borrower, the Trust or any other obligor to or benefiting Lender which are evidenced or secured by or otherwise provided in the Loan Agreement, the Notes, this Mortgage or any of the other Loan Documents; and (iii) the reimbursement of Lender for any and all sums expended or advanced by Lender pursuant to any term or provision of or constituting additional indebtedness under or secured by this Mortgage or any of the other Loan Documents, with interest thereon as provided herein or therein (collectively, the "Obligations").

In addition to the Real Estate, the Premises hereby mortgaged includes all buildings, structures and improvements now or hereafter constructed or erected upon or located on or under the Real Estate, all tenements, easements, rights-of-way and rights used as a means of access thereto, all fixtures and appurtenances thereto now or hereafter belonging or pertaining to the Real Estate, and all rents, issues, royalties, income, revenue, proceeds, profits, security deposits and all accounts relating to the Premises and all other benefits thereof, and any after-acquired title, franchise, or license and the reversions or remainders thereof, for so long and during all such times as Borrower may be entitled thereto (which are pledged primarily and on a parity with said Real Estate and not secondarily), and all machinery, apparatus, equipment, appliances, floor covering, furniture, furnishings, supplies, materials, fittings, fixtures and other personal property of every kind and nature whatsoever, and all proceeds thereof, now or hereafter located thereon or therein and which is owned by Borrower or the Trust. All of the land, estate and property hereinabove described, real, personal and mixed, whether or not affixed or annexed, and all rights hereby conveyed and mortgaged are intended so to be as a unit and are hereby understood, agreed and declared, to the maximum extent permitted by law, to form a part and parcel of the Real Estate and to be appropriated to the use of the Real Estate, and shall be for the purposes of this Mortgage deemed to be conveyed and mortgaged hereby; provided, however, as to any of the property aforesaid which does not so form a part and parcel of the Real Estate, this Mortgage is hereby deemed to also be a Security Agreement under the Uniform Commercial Code of the State of Illinois (the "Code") for purposes of granting a security interest in such property, which Borrower hereby grants to Lender, as secured party (as defined in the Code).

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

## IT IS FURTHER UNDERSTOOD AND AGREED THAT:

1. Title. Borrower represents, warrants and covenants that (a) the Trust is the holder of the legal title to the Premises, free and clear of all liens and encumbrances, except those liens and encumbrances permitted in writing by Lender (the "Permitted Exceptions"); and (b) Borrower has legal power and authority to mortgage and convey the Premises.

2. Maintenance, Repair and Restoration of Improvements, Payment of Prior Liens. Borrower shall: (a) promptly repair, restore or rebuild any buildings or improvements now or hereafter on the Premises which may become damaged or be destroyed; (b) keep the Premises in good condition and repair, without waste, and free from mechanics' liens or other liens or claims for lien, except that Borrower shall have the right to contest by appropriate proceedings the validity or amount of any such lien if and only if Borrower shall, within fifteen days after the filing thereof, (i) place a bond with Lender in an amount, form, content and issued by a surety reasonably acceptable to Lender for the payment of any such lien or (ii) cause the title company which has issued the loan policy of title insurance to Lender insuring the lien of this Mortgage to issue an endorsement thereto insuring against loss or damage on account of any such lien; (c) immediately pay when due any indebtedness which may be secured by a lien or charge on the Premises superior or inferior to or at parity with the lien hereof (no such superior, inferior or parity lien to be permitted hereunder), and upon request exhibit satisfactory evidence of the discharge of any such lien to Lender; (d) complete within a reasonable time any buildings or any other improvements now or at any time in process of construction upon the Premises; (e) comply with all requirements of law, municipal ordinances and restrictions of record with respect to the Premises and the use thereof, including without limitation, those relating to building, zoning, environmental protection, health, fire and safety; (f) make no material alterations to the Premises or any buildings or other improvements now or hereafter constructed thereon, without the prior written consent of Lender; (g) not suffer or permit any change in the general nature of the occupancy of the Premises without the prior written consent of Lender; (h) not initiate or acquiesce in any zoning reclassification without the prior written consent of Lender; (i) pay each item of indebtedness secured by this Mortgage when due according to the terms of the Loan Agreement and the other Loan Documents; and (j) duly perform and observe all of the covenants, terms, provisions and agreements herein, in the Loan Agreement and in the other Loan Documents on the part of Borrower to be performed and observed. As used in this Paragraph and elsewhere in this Mortgage, the term "indebtedness" shall mean and include the principal sum evidenced by the Notes, together with all interest thereon and all other amounts payable to Lender thereunder, and all other sums at any time secured by this Mortgage.

3. Payment of Taxes and Assessments. Borrower shall pay all general taxes, special taxes, special assessments, water charges, sewer service charges, and all other liens or charges levied or assessed against the Premises, or any interest therein, of any nature whatsoever when due and before any penalty or interest is assessed, and, at the request of Lender, shall furnish to Lender duplicate receipts of payment therefor. If any special assessment is permitted by applicable law to be paid in installments, Borrower shall have the right to pay such assessment in installments, so long as all such installments are paid prior to the due date thereof.

Notwithstanding anything contained herein to the contrary, Borrower shall have the right to protest any taxes assessed against the Premises, so long as such protest is conducted in good faith by appropriate legal proceedings diligently prosecuted and Borrower shall furnish to the title insurer such security or indemnity as said insurer requires to induce it to issue an endorsement, in form and substance acceptable to Lender, insuring over any exception created by such protest.

4. Tax Deposits. If an Event of Default has occurred and is continuing, Borrower covenants that it shall deposit with Lender on the first day of each month until the indebtedness secured by this Mortgage is fully paid, a sum equal to one-twelfth (1/12th) of 105% of the annual taxes and assessments (general and special) on the Premises, as reasonably determined by Lender. If requested by Lender, Borrower shall also deposit with Lender an amount of money which, together with the aggregate of the monthly deposits to be made pursuant to the preceding sentence as of one month prior to the date on which the next installment of annual taxes and assessments for the current calendar year become due, shall be sufficient to pay in full such installment of annual taxes and assessments, as estimated by Lender. Such deposits are to be held with interest and are to be used for the payment of taxes and assessments on the Premises next due and payable when they become due. Lender may, at its option, pay such taxes and assessments when the same become due and payable (upon submission of appropriate bills therefor from Borrower) or shall release sufficient funds to Borrower for the payment thereof. If the funds so deposited are insufficient to pay any such taxes or assessments for any year (or installments thereof, as applicable) when the same shall become due and payable, Borrower shall, within ten days after receipt of demand therefor, deposit additional funds as may be necessary to pay such taxes and assessments in full. If the funds so deposited exceed the amount required to pay such taxes and assessments for any year, the excess shall be applied toward subsequent deposits. Said deposits need not be kept separate and apart from any other funds of Lender.

5. Lender's Interest In and Use of Deposits. Upon the occurrence of an Event of Default, Lender may, at its option, apply any monies at the time or deposit pursuant to Paragraph 4 hereof toward any of the indebtedness secured hereby in such order and manner as Lender may elect. When such indebtedness has been fully paid, any remaining deposits shall be returned to Borrower. Such deposits are hereby pledged as additional security for the indebtedness hereunder and shall not be subject to the direction or control of Borrower. Lender shall not be liable for any failure to apply to the payment of taxes, assessments and insurance premiums any amount so deposited unless Borrower, prior to the occurrence of an Event of Default, shall have requested Lender in writing to make application of such funds to the payment of such amounts, accompanied by the bills for such taxes, assessments and insurance premiums. Lender shall not be liable for any act or omission taken in good faith or pursuant to the instruction of any party.

6. Insurance.

(a) Borrower shall at all times keep all buildings, improvements, fixtures and articles of personal property now or hereafter situated on the Premises insured against loss or damage by fire and such other hazards as may reasonably be required by Lender, including without limitation: (i) all-risk fire and extended coverage insurance, with

vandalism and malicious mischief endorsements, for the full replacement value of the Premises, with agreed upon amount and inflation protection endorsements; (ii) if there are tenants under leases at the Premises, rent and rental value or business loss insurance for the same perils described in clause (i) above payable at the rate per month and for the period specified from time to time by Lender; (iii) broad form boiler and sprinkler damage insurance in an amount reasonably satisfactory to Lender, if and so long as the Premises shall contain a boiler and/or sprinkler system, respectively; (iv) if the Premises are located in a flood hazard area, flood insurance in the maximum amount obtainable up to the amount of the indebtedness hereby secured; and (v) such other insurance as Lender may from time to time require. Borrower also shall at all times maintain comprehensive public liability, property damage and workmen's compensation insurance covering the Premises and any employees thereof, with such limits for personal injury, death and property damage as Lender may require. Borrower shall be the named insured under such policies and Lender shall be identified as an additional insured party. All policies of insurance to be furnished hereunder shall be in forms, with companies, in amounts and with deductibles reasonably satisfactory to Lender, with mortgagee clauses attached to all policies in favor of and in form satisfactory to Lender, including a provision requiring that the coverage evidenced thereby shall not be terminated or modified without thirty days prior written notice to Lender and shall contain endorsements that no act or negligence of the insured or any occupant and no occupancy or use of the Premises for purposes more hazardous than permitted by the terms of the policies will affect the validity or enforceability of such policies as against Lender. Borrower shall deliver all policies, including additional and renewal policies, to Lender, and, in the case of insurance about to expire, shall deliver renewal policies not less than thirty days prior to their respective dates of expiration.

(b) Borrower shall not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained hereunder unless Lender is included thereon under a standard mortgage clause acceptable to Lender and such separate insurance is otherwise acceptable to Lender.

(c) In the event of loss, Borrower shall give prompt notice thereof to Lender, who, if such loss exceeds \$150,000, shall have the sole and absolute right to make proof of loss. If such loss exceeds \$150,000 or if such loss is \$150,000 or less and the conditions set forth in clauses (i), (ii) and (iii) of the immediately succeeding sentence are not satisfied, then each insurance company concerned is hereby authorized and directed to make payment for such loss directly and solely to Lender. If and only if (i) such loss is \$150,000 or less, (ii) no Event of Default or event that with the passage of time, the giving of notice or both would constitute an Event of Default then exists, and (iii) Lender determines that the work required to complete the repair or restoration of the Premises necessitated by such loss can be completed no later than the 60th day prior to the latest maturity date of the Loans, then Borrower may receive such payment directly. Lender shall have the right, at its option and in its sole discretion, to apply any insurance proceeds received by Lender pursuant to the terms of this paragraph after the payment of

# UNOFFICIAL COPY

all of Lender's expenses, either (i) on account of the unpaid principal balance of the Notes, irrespective of whether such principal balance is then due and payable, whereupon Lender may declare the whole of the balance of indebtedness hereby secured to be due and payable, or (ii) to the restoration or repair of the property damaged as provided in Paragraph 22 hereof. If insurance proceeds are delivered to Borrower by Lender as hereinafter provided, Borrower shall repair, restore or rebuild the damaged or destroyed portion of the Premises so that the condition and value of the Premises are substantially the same as the condition and value of the Premises prior to being damaged or destroyed. In the event of foreclosure of this Mortgage, all right, title and interest of Borrower in and to any insurance policies then in force shall pass to the purchaser at the foreclosure sale. At the request of Lender, from time to time, Borrower shall furnish Lender, without cost to Lender, evidence of the replacement value of the Premises.

7. Condemnation. If all or any part of the Premises are damaged, taken or acquired, either temporarily or permanently, in any condemnation proceeding, or by exercise of the right of eminent domain, the amount of any award or other payment for such taking or damages made in consideration thereof, to the extent of the full amount of the remaining unpaid indebtedness secured by this Mortgage, is hereby assigned to Lender, who is empowered to collect and receive the same and to give proper receipts therefor in the name of Borrower and the same shall be paid forthwith to Lender. Such award or monies shall be applied on account of the unpaid principal balance of the Notes, irrespective of whether such principal balance is then due and payable and, at any time from and after the taking Lender may declare the whole of the balance of the indebtedness hereby secured to be due and payable.

8. Stamp Tax. If, by the laws of the United States of America, or of any state or political subdivision having jurisdiction over Borrower, any tax is due or becomes due in respect of the execution and delivery of this Mortgage, the Notes or any of the other Loan Documents, Borrower covenants and agrees to pay such tax in the manner required by any such law. Borrower further covenants to reimburse Lender for any sums which Lender may expend by reason of the imposition of any such tax. Notwithstanding the foregoing, Borrower shall not be required to pay any income or franchise taxes of Lender.

9. Lease Assignment.

(a) As additional security for the payment of the Loans and the other Obligations, Borrower, as lessor, hereby unconditionally and absolutely grants, transfers, sets over and assigns to Lender the entire lessor's right, title and interest in and to all leases and subleases (including all extensions and renewals thereof) which now or hereafter affect all or any portion of the Premises (collectively, the "Leases") and in and to all rents, issues, income and profits of or from all or any portion of the Premises. Neither Obligor will, without Lender's prior written consent (i) enter into a Lease of all or any portion of the Premises, modify or amend the terms and conditions of any Lease, or give any approval or consent required or permitted by any Lease, (ii) execute an assignment or pledge of any rents and/or any leases affecting all or any portion of the

Premises; or (iii) accept any prepayment of any installment of any rents more than thirty days before the due date of such installment, other than security and other deposits.

(b) Borrower, at its sole cost and expense, will (i) at all times promptly and faithfully abide by, discharge and perform all of the covenants, conditions and agreements contained in all Leases affecting all or any portion of the Premises, on the part of the lessor thereunder to be kept and performed, and will not, without the prior written consent of Lender, release the liability of any tenant thereunder, permit any tenant thereunder to withhold the payment of rent or make off-sets against rent, permit any tenant to claim a total or partial eviction, permit any tenant to terminate or cancel any Lease, waive or excuse the obligation to pay rent under any Lease or modify or cancel the terms of any guaranty of any Lease; (ii) use its best efforts to enforce or secure the performance of all of the covenants, conditions and agreements of such Leases on the part of the tenants to be kept and performed; (iii) appear in and defend any action or proceeding arising under, growing out of or in any manner connected with such Leases or the obligations, duties or liabilities of the lessor or of the tenants thereunder; (iv) as additional security for the payment of the Loans and other Obligations, transfer and assign to Lender any Lease or Leases of the Premises heretofore or hereafter entered into, and make, execute and deliver to Lender upon demand, any and all instruments required to effectuate said assignment; (v) give written notice to Lender within five days after the occurrence of any material default under any Lease affecting all or any portion of the Premises; and (vi) exercise within five days of any demand therefor by Lender any right to request from the tenant under any Lease affecting all or any portion of the Premises a certificate with respect to the status thereof.

(c) Borrower represents and covenants to Lender that Borrower has not heretofore made any other assignment of all or any part of its interest in and to any or all of the Leases, or any or all of the rents, issues, income or profits assigned hereunder or entered into any agreement to subordinate any of the Leases, or Borrower's right to receive any of the rents, issues, income or profits assigned hereunder. So long as no Event of Default has occurred and is continuing, Borrower shall have the right to collect, but not more than thirty days in advance of the date provided for the payment thereof, all rents, issues, income and profits assigned hereunder (other than security or similar deposits) and to retain, use and enjoy the same. Lender shall have the right to notify the tenants under the Leases of this assignment at any time.

(d) Lender shall not be liable for any loss sustained by Borrower resulting from Lender's failure to let the Premises following the occurrence of an Event of Default or from any other act or omission of Lender in managing, operating or maintaining the Premises following the occurrence of an Event of Default. Lender shall not be obligated to observe, perform or discharge, nor does Lender hereby undertake to oversee, perform or discharge any covenant, term, condition or agreement contained in any Lease to be observed or performed by the lessor thereunder, or any obligation, duty or liability of Lender under or by reason of this Mortgage, and Borrower shall and does hereby agree to

indemnify Lender for, and to hold Lender harmless of and from, any and all liability, loss, or damage which Lender may or might incur under any Lease and of and from any and all claims and demands whatsoever which may be asserted against Lender by reason of any alleged obligation or undertaking on its part to observe or perform any of the covenants, terms, conditions and agreements contained in any Lease. Should Lender incur any liability, loss or damage under any Lease, or in the defense of any such claim or demand, the amount thereof, including costs, expenses and reasonable attorneys' fees, shall become immediately due and payable by Borrower with interest thereon at the Default Rate and shall be secured by this Mortgage. This Mortgage shall not operate to place responsibility for the care, control, management or repair of the Premises or for the carrying out of any of the covenants, terms, conditions and agreements contained in any Lease upon Lender, nor shall it operate to make Lender responsible or liable for any waste committed upon the Premises by any tenant, occupant or other party, or for any dangerous or defective condition of the Premises, or for any negligence in the management, upkeep, repair or control of the Premises resulting in loss or injury or death to any tenant, occupant, licensee, employee or stranger.

(e) In the event of the enforcement by Lender of the remedies provided for by law or by this Mortgage, the lessee under each Lease affecting all or any portion of the Premises shall, at the option of Lender, attorn to any person succeeding to the interest of Borrower as a result of such enforcement and shall recognize such successor in interest as lessor under such Lease without change in the terms or other provisions thereof; provided, however, that said successor in interest shall not be bound by any payment of rent or additional rent for more than one month in advance or any amendment or modification to any lease made without the consent of Lender or said successor in interest. Each tenant, upon request by said successor in interest, shall execute and deliver an instrument or instruments confirming such attornment.

(f) If an Event of Default has occurred and is continuing, Lender shall have the right to: (i) enter upon and take possession of the Premises, either in person or by agent or by a receiver appointed by a court, and have, hold, manage, lease and operate the same on such terms and for such period of time as Lender may deem necessary or proper, with full power to make from time to time all alterations, renovations, repairs or replacements thereto or thereof as may seem proper to Lender, to make, enforce, modify and accept the surrender of Leases, to obtain and evict tenants, to fix or modify rents, and to do any other act which Lender deems necessary or proper; and/or (ii) either with or without taking possession of the Premises, demand, sue for, settle, compromise, collect and give acquittances for all rents, issues, income and profits of and from the Premises and pursue all remedies for enforcement of the Leases and all the lessor's rights therein and thereunder, provided that, for such purpose, this Mortgage shall constitute an authorization and direction to the tenants under the Leases to pay all rents and other amounts payable under the Leases to Lender, without proof of Event of Default, upon receipt from Lender of written notice specifying that an Event of Default has occurred and directing such tenants to thereafter pay all such rents and other amounts to Lender



and to comply with any notice or demand by Lender for observance or performance of any of the covenants, terms, conditions and agreements contained in the Leases to be observed or performed by the tenants thereunder, and provided, further, that Borrower will facilitate in all reasonable ways Lender's collection of such rents, issues, income and profits, and upon request will execute written notices to the tenants under the Leases to thereafter pay all such rents and other amounts to Lender.

10. Effect of Extensions of Time. If the payment of the indebtedness secured hereby or any part thereof is extended or varied or if any part of any security for the payment of the indebtedness is released, all persons now or at any time hereafter liable therefor, or interested in the Premises or having an interest in Borrower or the Trust, shall be held to assent to such extension, variation or release, and their liability and the lien and all of the provisions hereof shall continue in full force, any right of recourse against all such persons being expressly reserved by Lender, notwithstanding such extension, variation or release.

11. Effect of Changes in Laws Regarding Taxation. If any law is enacted after the date hereof requiring (i) the deduction of any lien on the Premises from the value thereof for the purpose of taxation or (ii) the imposition upon Lender of the payment of the whole or any part of the taxes or assessments, charges or liens herein required to be paid by Borrower, or (iii) a change in the method of taxation of mortgages or debts secured by mortgages or Lender's interest in the Premises, or the manner of collection of taxes, so as to affect this Mortgage or the indebtedness secured hereby or the holders thereof, then Borrower, upon demand by Lender, shall pay such taxes or assessments, or reimburse Lender therefor; provided, however, that Borrower shall not be deemed to be required to pay any income or franchise taxes of Lender. Notwithstanding the foregoing, if in the opinion of counsel for Lender it may be unlawful to require Borrower to make such payment or the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then Lender may declare all of the indebtedness secured hereby to be immediately due and payable.

12. Lender's Performance of Defaulted Acts and Expenses Incurred by Lender. If an Event of Default has occurred and is continuing, Lender may, but need not (i) make any payment or perform any act herein required of Borrower in any form and manner deemed expedient by Lender, (ii) make full or partial payments of principal or interest on prior encumbrances, if any, (iii) purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, (iv) redeem from any tax sale or forfeiture affecting the Premises or consent to any tax or assessment or (v) cure any default of Borrower in any lease of the Premises. All monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including attorneys' fees, and any other monies advanced by Lender in regard to any tax referred to in Paragraph 8 above or to protect the Premises or the lien hereof, shall be so much additional indebtedness secured hereby, and shall become immediately due and payable by Borrower to Lender, upon demand, and with interest thereon at the Default Rate then in effect. In addition to the foregoing, any costs, expenses and fees, including attorneys' fees, incurred by Lender in connection with (a) sustaining the lien of this Mortgage or its priority, (b) protecting or enforcing any of Lender's rights hereunder, (c) recovering any indebtedness secured hereby, (d) any

# UNOFFICIAL COPY

litigation or proceedings affecting the Loan Agreement, this Mortgage, any of the other Loan Documents or the Premises, including without limitation, bankruptcy and probate proceedings, or (e) preparing for the commencement, defense or participation in any threatened litigation or proceedings affecting the Loan Agreement, this Mortgage, any of the other Loan Documents or the Premises, shall be so much additional indebtedness secured hereby, and shall become immediately due and payable by Borrower to Lender, upon demand, and with interest thereon at the Default Rate. The interest accruing under this Paragraph 12 shall be immediately due and payable by Borrower to Lender, and shall be additional indebtedness evidenced by the Notes and secured by this Mortgage. Lender's failure to act shall never be considered as a waiver of any right accruing to Lender on account of any Event of Default. Should any amount paid out or advanced by Lender hereunder, or pursuant to any agreement executed by Borrower in connection with the Loans, be used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any lien or encumbrance upon the Premises or any part thereof, then Lender shall be subrogated to any and all rights, equal or superior titles, liens and equities, owned or claimed by any owner or holder of said outstanding liens, charges and indebtedness, regardless of whether said liens, charges and indebtedness are acquired by assignment or have been released of record by the holder thereof upon payment.

13. Lender's Reliance on Tax Bills and Claims for Liens. Lender, in making any payment hereby authorized: (a) relating to taxes and assessments, may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof; or (b) for the purchase, discharge, compromise or settlement of any other prior lien, may do so without inquiry as to the validity or amount of any claim for lien which may be asserted.

14. Event of Default; Acceleration. Each of the following shall constitute an "Event of Default" for purposes of this Mortgage: (a) the occurrence of an Event of Default under the Loan Agreement or the other Loan Documents; and (b) any sale, transfer, lease, assignment, conveyance, financing, lien or encumbrance made in violation of Paragraph 27 of this Mortgage. If an Event of Default occurs, Lender may, at its option, declare the whole of the indebtedness hereby secured to be immediately due and payable without notice to Borrower, with interest thereon from the date of such Event of Default at the Default Rate.

15. Foreclosure; Expense of Litigation.

(a) Upon the occurrence of an Event of Default, Lender shall have the right to foreclose the lien hereof to satisfy the obligations secured hereby (or any part thereof) and/or exercise any right, power or remedy provided in this Mortgage or any of the other Loan Documents. In the event of a foreclosure sale, Lender is hereby authorized, without the consent of Borrower, to assign any and all insurance policies to the purchaser at such sale, or to take such other steps as Lender may deem advisable to cause the interest of such purchaser to be protected by any of such insurance policies.

(b) In any suit to foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of Lender for attorneys' fees, appraisers' fees, environmental audits, property inspections, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to the title as Lender may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Premises. All expenditures and expenses of the nature mentioned in this paragraph and such other expenses and fees as may be incurred in the enforcement of Borrower's obligations hereunder, the protection of said Premises and the maintenance of the lien of this Mortgage, including the fees of any attorney employed by Lender in any litigation or proceeding affecting this Mortgage, the Loan Agreement of the Premises, including probate and bankruptcy proceedings, or in preparations for the commencement or defense of any proceeding or threatened suit or proceeding shall be immediately due and payable by Borrower, with interest thereon at the Default Rate and shall be secured by this Mortgage.

16. Application of Proceeds of Foreclosure Sale. The proceeds of any foreclosure sale of the Premises shall be distributed and applied in the following order of priority: first, to all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in Paragraph 15 above; second, to all other items which may under the terms hereof constitute secured indebtedness additional to that evidenced by the Notes, with interest thereon as provided herein or in the other Loan Documents; third, to all principal and interest remaining unpaid on the Notes; and fourth, any surplus to Borrower, its successors or assigns, as their rights may appear or to any other party legally entitled thereto.

17. Appointment of Receiver. Upon or at any time after the filing of a complaint to foreclose this Mortgage, the court in which such complaint is filed shall, upon petition by Lender, appoint a receiver for the Premises. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of Borrower or the Trust at the time of application for such receiver and without regard to the value of the Premises or whether the same shall be then occupied as a homestead or not and Lender hereunder or any other holder of the Notes may be appointed as such receiver. Such receiver shall have power to collect the rents, issues and profits of the Premises (i) during the pendency of such foreclosure suit, (ii) in case of a sale and a deficiency, during the full statutory period of redemption, whether there be redemption or not, and (iii) during any further times when Borrower, but for the intervention of such receiver, would be entitled to collect such rents, issues and profits. Such receiver also shall have all other powers and rights that may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during said period, including, to the extent permitted by law, the right to lease all or any portion of the Premises for a term that extends beyond the time of such receiver's possession without obtaining prior court approval of such lease. The court from time to time may authorize the application of the net income received

by the receiver in payment of (a) the indebtedness secured hereby, or by any decree foreclosing this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to foreclosure sale, and (b) any deficiency upon a sale and deficiency.

18. Lender's Right of Possession in Case of Default. At any time after an Event of Default has occurred, Borrower shall, upon demand of Lender, surrender to Lender possession of the Premises. Lender, in its discretion, may, with or without process of law, enter upon and take and maintain possession of all or any part of the Premises, together with all documents, books, records, papers and accounts relating thereto and may exclude Borrower and the Trust and their respective employees, agents or servants therefrom, and Lender may then hold, operate, manage, develop and control the Premises, either personally or by its agents, and, in connection therewith but not in limitation thereof, exercise any or all of its rights and remedies set forth in the Loan Documents. Lender shall have full power to use such measures, legal or equitable, as in its discretion may be deemed proper or necessary to enforce the payment or security of the avails, rents, issues, and profits of the Premises, including actions for the recovery of rent, actions in forcible detainer and actions in distress for rent. Without limiting the generality of the foregoing, Lender shall have full power to:

- (a) cancel or terminate any lease or sublease for any cause or on any ground which would entitle Borrower to cancel the same;
- (b) elect to disaffirm any lease or sublease which is then subordinate to the lien hereof;
- (c) extend or modify any then existing leases and to enter into new leases, which extensions, modifications and leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the indebtedness secured hereby and beyond the date of the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Borrower and all persons whose interests in the Premises are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the mortgage indebtedness, satisfaction of any foreclosure judgment, or issuance of any certificate of sale or deed to any purchaser;
- (d) make any repairs, renewals, replacements, alterations, additions, betterments and improvements to the Premises as Lender deems are necessary;
- (e) insure and reinsure the Premises and all risks incidental to Lender's possession, operation and management thereof; and
- (f) receive all of such avails, rents, issues and profits.

19. Application of Income Received by Lender. Lender, in the exercise of the rights and powers hereinabove conferred upon it, shall have full power to use and apply the avails, rents, issues and profits of the Premises to the payment of or on account of the following, in such order as Lender may determine:

(a) to the payment of the operating expenses of the Premises, including cost of management, marketing, sale and leasing thereof (which shall include compensation to Lender and its agent or agents for management and marketing activities, and lease and sales commissions and other compensation and expenses of seeking and procuring tenants and purchasers and entering into leases and sales contracts), established claims for damages, if any, and premiums on insurance hereinabove authorized;

(b) to the payment of taxes and special assessments now due or which may hereafter become due on the Premises; and

(c) to the payment of any indebtedness secured hereby, including any deficiency which may result from any foreclosure sale.

20. Rights Cumulative. Each right, power and remedy herein conferred upon Lender is cumulative and in addition to every other right, power or remedy, express or implied, given now or hereafter existing under any of the Loan Documents or at law or in equity, and each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by Lender, and the exercise or the beginning of the exercise of one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy, and no delay or omission of Lender in the exercise of any right, power or remedy accruing hereunder or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any Event of Default or acquiescence therein.

21. Lender's Right of Inspection. Lender and its representatives shall have the right to inspect the Premises and the books and records with respect thereto at all reasonable times after prior notice, and access thereto shall be permitted for that purpose.

22. Disbursement of Insurance or Eminent Domain Proceeds.

(a) Before commencing to repair, restore or rebuild following damage to, or the destruction of, all or a portion of the Premises (provided such repair is reasonably expected to cost more than \$150,000), whether by fire or other casualty, or the taking of any portion of the Premises under eminent domain or condemnation: (i) Borrower shall obtain from Lender its approval, which approval may be withheld or given at Lender's sole discretion (except as provided below), of all site and building plans and specifications pertaining to such repair, restoration or rebuilding, provided that Lender will not unreasonably withhold its approval of any plans and specifications which are substantially similar to any plan and specifications theretofore approved by Lender; (ii)

**UNOFFICIAL COPY**

To Borrower  
or the Trust:

Javo-Mex Corporation  
9300 South Sangamon Street  
Chicago, Illinois 60620  
Attn: Ms. Diana Cuevas

With copy to:

Kwiatt & Ruben, Ltd.  
500 Central Avenue  
Northfield, Illinois 60093  
Attn: Phillip E. Ruben, Esq.

or to any other address as to any of the parties hereto, as such party shall designate in a written notice to the other party hereto. All notices sent pursuant to the terms of this Paragraph shall be deemed received (i) if personally delivered, then on the date of delivery, (ii) if sent by overnight, express carrier, then on the next federal banking day immediately following the day sent, or (iii) if sent by registered or certified mail, then on the earlier of the third federal banking day following the day sent or when actually received.

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

26. Waiver of Rights. Borrower hereby covenants and agrees that Borrower shall not apply for or avail itself of any appraisal, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws," now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but hereby waives the benefit of such laws. To the fullest extent permitted by law, Borrower, for itself and all who may claim through or under it, waives any claims based on allegations that Lender has failed to act in a commercially reasonable manner (except as otherwise expressly provided in this Mortgage or the other Loan Documents) and any and all rights to have the property and estates comprising the Premises marshalled upon any foreclosure of the lien hereof and further agrees that any court having jurisdiction to foreclose such lien may order the Premises sold as an entirety.

27. Transfer of Premises and Other Interests; Further Encumbrance.

(a) Neither all nor any portion of (i) the Premises or (ii) any interest in Borrower or the beneficial interest in the Trust or (iii) any interest of Borrower or the Trust in the Premises shall be sold, conveyed, assigned, encumbered or otherwise transferred (nor shall any agreement be entered into to sell, convey, assign, encumber or otherwise transfer same) without, in each instance, the prior written consent of Lender, which consent may be given or withheld in Lender's sole and absolute discretion, and may be conditioned in any manner that Lender desires, including, without limitation, increases in the rate of interest charged on the Loans and payment of assumption fees; provided, however, that nothing herein is intended to prohibit Diana Cuevas from

# UNOFFICIAL COPY

Borrower shall submit to Lender for Lender's review and approval all of the other items described in Article 5 of the Loan Agreement, to the extent reasonably requested by Lender; and, (iii) there shall have been delivered to Lender a waiver of subrogation from any insurer with respect to Borrower or the then owner or other insured under the policy of insurance in question.

(b) Insurance or condemnation proceeds held by Lender for the restoration or repair of the Premises shall be disbursed from time to time by Lender subject to and in accordance with the same conditions, as set forth in the Loan Agreement for the disbursement of Loan Advances (including, but not limited to, the conditions set forth in Article 5 of the Loan Agreement).

(c) In the event insurance proceeds or condemnation award shall exceed the amount necessary to complete the repair, restoration or rebuilding of the improvements upon the Premises, such excess shall be applied on account of the unpaid principal balance of the Loans irrespective of whether such balance is then due and payable.

(d) In the event Borrower commences the repair or rebuilding of the improvements located on the Premises, but fails to comply with the conditions to the payment or application of insurance or condemnation proceeds set forth herein, then such failure shall constitute an Event of Default.

23. Release Upon Payment and Discharge of Borrower's Obligations. Lender shall release this Mortgage and the lien hereof by proper instrument upon payment and discharge of all indebtedness and other obligations secured hereby, including payment of all reasonable expenses incurred by Lender in connection with the execution of such release.

24. Notices. Any notices, communications and waivers under this Mortgage shall be in writing and shall be (i) delivered in person, (ii) mailed, postage prepaid, either by registered or certified mail, return receipt requested, or (iii) sent by overnight express courier, addressed in each case as follows:

To Lender: LaSalle Bank National Association  
3201 North Ashland Avenue  
Chicago, Illinois 60657  
Attn: Mr. Christopher Ebert

With copy to: Schwartz Cooper Greenberger & Krauss, Chtd.  
180 North LaSalle Street, Suite 2700  
Chicago, Illinois 60601  
Attn: Martin Behn, Esq.

# UNOFFICIAL COPY

transferring shares of Borrower to her children so long as she continues to hold not less than 51% of Borrower's issued and outstanding shares at all times. Any violation or attempted violation of the provisions of this Paragraph 27 shall be an Event of Default for purposes of all of the Loan Documents.

(b) Any consent by Lender, or any waiver by Lender of an Event of Default under this Paragraph 27 shall not constitute a consent to or waiver of any right, remedy or power of Lender upon a continuing or subsequent Event of Default under this Paragraph 27. Borrower acknowledges that any agreements, liens, charges or encumbrances created in violation of the provisions of this Paragraph 27 shall be void and of no force or effect. Borrower agrees that if any provision of this Paragraph 27 is deemed a restraint on alienation that such restraint is a reasonable one.

## 28. Expenses Relating to Note and Mortgage.

(a) Borrower will pay all expenses, charges, costs and fees relating to the Loans or necessitated by the terms of the Loan Agreement, this Mortgage or any of the other Loan Documents, including without limitation, Lender's attorneys' fees in connection with the negotiation, documentation, administration, servicing and enforcement of the Loan Agreement, this Mortgage and the other Loan Documents, all filing, registration and recording fees, all other expenses incident to the execution and acknowledgment of this Mortgage and all federal, state, county and municipal taxes, and other taxes (provided Borrower shall not be required to pay any income or franchise taxes of Lender), duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of the Loan Agreement, this Mortgage and the other Loan Documents. Borrower recognizes that, during the term of this Mortgage, Lender:

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

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

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



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

(v) May enter into negotiations with Borrower, the Trust or any of their respective agents, employees or attorneys in connection with the existence or curing of any Event of Default hereunder, the sale of the Premises, the assumption of liability for any of the indebtedness represented by the Notes or the transfer of the Premises in lieu of foreclosure; or

(vi) May enter into negotiations with Borrower, the Trust or any of their respective agents, employees or attorneys pertaining to Lender's approval of actions taken or proposed to be taken by Borrower or the Trust which approval is required by the terms of this Mortgage.

(b) All expenses, charges, costs and fees described in this Paragraph 28 shall be so much additional indebtedness secured hereby, shall bear interest from the date so incurred until paid at the Default Rate and shall be paid, together with said interest, by Borrower forthwith upon demand.

29. Statement of Indebtedness. Borrower, within seven days after being so requested by Lender, shall furnish a duly acknowledged written statement setting forth the amount of the debt secured by this Mortgage, the date to which interest has been paid and stating either that no offsets or defenses exist against such debt or, if such offsets or defenses are alleged to exist, the nature thereof.

30. Further Instruments. Upon request of Lender, Borrower shall execute, acknowledge and deliver all such additional instruments and further assurances of title and shall 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 and of the other Loan Documents.

31. Additional Indebtedness Secured. All persons and entities with any interest in the Premises or about to acquire any such interest should be aware that this Mortgage secures more than the stated principal amount of the Notes and interest thereon; this Mortgage secures any and all other amounts which may become due under the Notes or any other document or instrument evidencing, securing or otherwise affecting the indebtedness secured hereby, including, without limitation, any and all amounts expended by Lender to operate, manage or maintain the Premises or to otherwise protect the Premises or the lien of this Mortgage.

32. Indemnity. Borrower hereby covenants and agrees that no liability shall be asserted or enforced against Lender in the exercise of the rights and powers granted to Lender in this Mortgage, and Borrower hereby expressly waives and releases any such liability. Borrower shall indemnify and save Lender harmless from and against any and all liabilities, obligations, losses, damages, claims, costs and expenses (including attorneys' fees and court costs)

(collectively, the "Claims") of whatever kind or nature which may be imposed on, incurred by or asserted against Lender at any time by any third party which relate to or arise from: (a) any suit or proceeding (including probate and bankruptcy proceedings), or the threat thereof, in or to which Lender may or does become a party, either as plaintiff or as a defendant, by reason of this Mortgage or for the purpose of protecting the lien of this Mortgage; (b) the offer for sale or sale of all or any portion of the Premises; and (c) the ownership, leasing, use, operation or maintenance of the Premises, if such Claims relate to or arise from actions taken prior to the surrender of possession of the Premises to Lender in accordance with the terms of this Mortgage; provided, however, that Borrower shall not be obligated to indemnify or hold Lender harmless from and against any Claims directly arising from the gross negligence or willful misconduct of Lender. All costs provided for herein and paid for by Lender shall be so much additional indebtedness secured hereby and shall become immediately due and payable without notice and with interest at the Default Rate.

33. Waiver of Rights of Redemption and Reinstatement. Borrower hereby releases and waives, to the fullest extent permitted by law, any and all rights of reinstatement and redemption provided in the Illinois Mortgage Foreclosure Law.

34. Fixture Filing. Borrower and Lender agree that this Mortgage shall constitute a financing statement and fixture filing under the Code with respect to all "fixtures" (as defined in the Code) attached to or otherwise forming a part of the Premises and that a security interest in and to such fixtures is hereby granted to Lender. For purposes of the foregoing, Lender is the secured party and Borrower is the debtor and the collateral covered by this financing statement shall be all items of property contained within the definition of the "Premises" which is or becomes a fixture on the Real Estate or any other real estate contained within the definition of the Premises.

35. Compliance with Illinois Mortgage Foreclosure Law.

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

(b) If any provision of this Mortgage shall grant to Lender (including Lender acting as a mortgagee-in-possession) or a receiver appointed pursuant to the provisions of Paragraph 17 of this Mortgage any powers, rights or remedies prior to, upon or following the occurrence of an Event of Default which are more limited than the powers, rights or remedies that would otherwise be vested in Lender or in such receiver under IMFL in the absence of said provision, Lender and such receiver shall be vested with the powers, rights and remedies granted in IMFL to the full extent permitted by law.

(c) Without limiting the generality of the foregoing, all expenses incurred by Lender **which are of the type** referred to in Section 5/15-1510 or Section 5/15-1512 of IMFL, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated elsewhere in this Mortgage, shall be added to the indebtedness secured by this Mortgage and/or by the judgment of foreclosure.

36. Miscellaneous.

(a) Successors and Assigns. This Mortgage and all provisions hereof shall be binding upon and enforceable against Borrower, the Trust and its estates, heirs, legatees, assigns and other successors. This Mortgage and all provisions hereof shall inure to the benefit of Lender, its successors and assigns and any holder or holders, from time to time, of the Notes

(b) Invalidity of Provisions; Governing Law. In the event that any provision of this Mortgage is deemed to be invalid by reason of the operation of law, or by reason of the interpretation placed thereon by any administrative agency or any court, Borrower and Lender shall negotiate an equitable adjustment in the provisions of the same in order to effect, to the maximum extent permitted by law, the purpose of this Mortgage and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected thereby and shall remain in full force and effect. This Mortgage is to be construed in accordance with and governed by the laws of the State of Illinois.

(c) Municipal and Zoning Requirements. Borrower shall not by act or omission permit any building or other improvement on premises not subject to the lien of this Mortgage to rely on the Premises or any part thereof or any interest therein to fulfill any municipal or governmental requirement, and Borrower hereby assigns to Lender 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 premises not subject to the lien of this Mortgage or any interest therein to fulfill any governmental or municipal requirement. Borrower shall not by act or omission alter (or permit the alteration of) the zoning classification of the Premises in effect as of the date hereof, nor shall Borrower impair the integrity of the Premises as a single zoning lot separate and apart from all other premises. Any act or omission by Borrower which would result in a violation of any of the provisions of this subparagraph shall be void.

(d) Rights of Tenants. Lender shall have the right and option to commence a civil action to foreclose this Mortgage and to obtain a Decree of Foreclosure and Sale subject to the rights of any tenant or tenants of the Premises having an interest in the Premises prior to that of Lender. The failure to join any such tenant or tenants of the Premises as party defendant or defendants in any such civil action or the failure of any Decree of Foreclosure and Sale to foreclose their rights shall not be asserted by Borrower as a defense in any civil action instituted to collect the indebtedness secured hereby, or

any part thereof or any deficiency remaining unpaid after foreclosure and sale of the Premises, any statute or rule of law at any time existing to the contrary notwithstanding.

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

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

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

(h) Time of the Essence. Time is of the essence of the payment by Borrower of all amounts due and owing to Lender under the Loan Agreement and the other Loan Documents and the performance and observance by Borrower of all terms, conditions, obligations and agreements contained in this Mortgage and the other Loan Documents.

(i) No Merger. It being the desire and intention of the parties hereto that the Mortgage and the lien hereof do not merge in fee simple title to the Premises, it is hereby understood and agreed that should Lender acquire any additional or other interest in or to the Premises or the ownership thereof, then, unless a contrary intent is manifested by Lender as evidenced by an express statement to that effect in an appropriate document duly recorded, this Mortgage and the lien hereof shall not merge in the fee simple title and this Mortgage may be foreclosed as if owned by a stranger to the fee simple title.

(j) Maximum Indebtedness. Notwithstanding anything contained herein to the contrary, in no event shall the indebtedness secured by this Mortgage exceed an amount equal to \$15,000,000.

(k) **JURISDICTION AND VENUE.** MORTGAGOR HEREBY AGREES THAT ALL ACTIONS OR PROCEEDINGS INITIATED BY MORTGAGOR AND ARISING DIRECTLY OR INDIRECTLY OUT OF THIS MORTGAGE SHALL BE LITIGATED IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS, OR THE UNITED STATES DISTRICT COURT FOR THE

**UNOFFICIAL COPY**

NORTHERN DISTRICT OF ILLINOIS OR, IF MORTGAGEE INITIATES SUCH ACTION, ANY COURT IN WHICH MORTGAGEE SHALL INITIATE SUCH ACTION AND WHICH HAS JURISDICTION. MORTGAGOR HEREBY EXPRESSLY SUBMITS AND CONSENTS IN ADVANCE TO SUCH JURISDICTION IN ANY ACTION OR PROCEEDING COMMENCED BY MORTGAGEE IN ANY OF SUCH COURTS, AND HEREBY WAIVES PERSONAL SERVICE OF THE SUMMONS AND COMPLAINT, OR OTHER PROCESS OR PAPERS ISSUED THEREIN, AND AGREES THAT SERVICE OF SUCH SUMMONS AND COMPLAINT OR OTHER PROCESS OR PAPERS MAY BE MADE BY REGISTERED OR CERTIFIED MAIL ADDRESSED TO MORTGAGOR AT THE ADDRESS TO WHICH NOTICES ARE TO BE SENT PURSUANT TO THIS MORTGAGE. MORTGAGOR WAIVES ANY CLAIM THAT CHICAGO, ILLINOIS OR THE NORTHERN DISTRICT OF ILLINOIS IS AN INCONVENIENT FORUM OR AN IMPROPER FORUM BASED ON LACK OF VENUE. SHOULD MORTGAGOR, AFTER BEING SO SERVED, FAIL TO APPEAR OR ANSWER TO ANY SUMMONS, COMPLAINT, PROCESS OR PAPERS SO SERVED WITHIN THE NUMBER OF DAYS PRESCRIBED BY LAW AFTER THE MAILING THEREOF, MORTGAGOR SHALL BE DEEMED IN DEFAULT AND AN ORDER AND/OR JUDGMENT MAY BE ENTERED BY MORTGAGEE AGAINST MORTGAGOR AS DEMANDED OR PRAYED FOR IN SUCH SUMMONS, COMPLAINT, PROCESS OR PAPERS. THE EXCLUSIVE CHOICE OF FORUM FOR MORTGAGOR SET FORTH IN THIS PARAGRAPH SHALL NOT BE DEEMED TO PRECLUDE THE ENFORCEMENT, BY MORTGAGEE, OF ANY JUDGMENT OBTAINED IN ANY OTHER FORUM OR THE TAKING, BY MORTGAGEE, OF ANY ACTION TO ENFORCE THE SAME IN ANY OTHER APPROPRIATE JURISDICTION, AND MORTGAGOR HEREBY WAIVES THE RIGHT, IF ANY, TO COLLATERALLY ATTACK ANY SUCH JUDGMENT OR ACTION.

(l) WAIVER OF RIGHT TO JURY TRIAL. MORTGAGOR AND MORTGAGEE ACKNOWLEDGE AND AGREE THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS MORTGAGE, THE LOAN AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS OR WITH RESPECT TO THE TRANSACTIONS CONTEMPLATED HEREIN AND THEREIN WOULD BE BASED UPON DIFFICULT AND COMPLEX ISSUES. ACCORDINGLY, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, MORTGAGOR AND MORTGAGEE, BY ITS ACCEPTANCE OF THIS MORTGAGE, HEREBY KNOWINGLY AND VOLUNTARILY MUTUALLY (A) WAIVE THE RIGHT TO TRIAL BY JURY IN ANY CIVIL ACTION, CLAIM, COUNTERCLAIM, CROSS-CLAIM, THIRD-PARTY CLAIM, DISPUTE, DEMAND, SUIT OR PROCEEDING ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS MORTGAGE, THE LOAN AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS, THE LOANS, OR ANY RENEWAL, EXTENSION OR MODIFICATION THEREOF, OR ANY CONDUCT OF ANY PARTY RELATING

# UNOFFICIAL COPY

**THERE TO, AND (B) AGREE THAT ANY SUCH ACTION, CLAIM, SUIT OR PROCEEDING SHALL BE TRIED BEFORE A JUDGE AND NOT BEFORE A JURY.**

(m) Construction Loan. A Note being secured by this Mortgage evidences a debt created by one or more disbursements made by Lender to Borrower to finance the cost of the construction of certain improvements upon the Real Estate in accordance with the provisions of the Loan Agreement, and this Mortgage is a construction mortgage as such term is defined in Section 9-313(1)(c) of the Uniform Commercial Code as adopted in the State of Illinois. The terms and conditions recited and set forth in the Loan Agreement are fully incorporated in this Mortgage and made a part hereof, and an Event of Default under any of the conditions or provisions of the Loan Agreement shall constitute a default hereunder. Upon the occurrence of any such Event of Default, the holder of the Notes may at its option declare the indebtedness secured thereby immediately due and payable, or complete the construction of said improvements and enter into the necessary contracts therefor, in which case all money expended shall be so much additional indebtedness secured hereby and any money expended in excess of the amount of the original principal shall be immediately due and payable with interest at the Default Rate. In the event of a conflict between the terms of the Loan Agreement and this Mortgage, the provisions of the Loan Agreement shall apply and take precedence over this Mortgage.

(n) Trustee Exculpation. This Mortgage is executed by LASALLE BANK NATIONAL ASSOCIATION (formerly known as LaSalle National Bank), not personally but solely as Trustee as aforesaid, in the exercise of the power and authority conferred upon and vested in it as such Trustee, and it is expressly understood and agreed that nothing in this Mortgage shall be construed as creating any liability on such Trustee personally to perform any express or implied covenant, condition or obligation under this Mortgage, all such liability, if any, being expressly waived by every person or entity now or hereafter claiming any right, title or interest under this Mortgage, provided, however, that the foregoing exculpation of the Trustee shall not impair or otherwise affect any of Lender's rights or remedies against the assets held by Borrower or other collateral now or hereafter pledged to Lender as security for the obligations of Borrower or against Borrower, any guarantor of the Loans or any other person or entity liable for the obligations of Borrower.

# UNOFFICIAL COPY

IN WITNESS WHEREOF, Borrower has executed this instrument the day and year first above written.

**LASALLE BANK NATIONAL ASSOCIATION** (formerly known as LaSalle National Bank), not personally but solely as Trustee as aforesaid

**JAVO-MEX CORPORATION**, an Illinois corporation

By: [Signature]  
 Title: Senior Vice President of LaSalle Bank National Association - Lender

By: [Signature]  
 Title: President

T:\42641\10197\1999 Modification\Mortgage & Assignment of Leases-v2.wpd

By: [Signature] ASSISTANT VICE PRESIDENT

Property of Cook County Clerk's Office

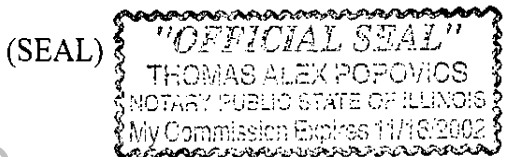
# UNOFFICIAL COPY

STATE OF Illinois )  
 ) SS.  
COUNTY OF Cook )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Thomas A. Popovics, the ASSISTANT VICE PRESIDENT of LASALLE BANK NATIONAL ASSOCIATION (formerly known as LaSalle National Bank), as Trustee, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such ASSISTANT VICE PRESIDENT, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said Trustee, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 30<sup>th</sup> day of June, 1999.

Thomas A. Popovics  
NOTARY PUBLIC

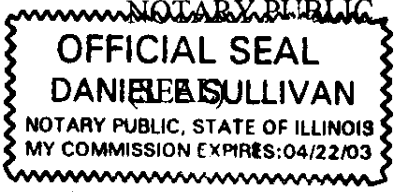


STATE OF ILL )  
 ) SS.  
COUNTY OF Cook )

I, DANIEL E SULLIVAN, a Notary Public in and for said County, in the State aforesaid, do hereby certify that John PHILLIPP, the PRESIDENT of JAVO-MEX CORPORATION, an Illinois corporation, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such PHILLIPP, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 10<sup>TH</sup> day of JUNE, 1999.

Daniel E Sullivan  
NOTARY PUBLIC





# UNOFFICIAL COPY

## EXHIBIT A

Legal Description of Premises

[TO BE PROVIDED BY MORTGAGOR]

Property of Cook County Clerk's Office

EXHIBIT "A"

COMMON ADDRESS OF PROPERTY: 9300 SOUTH SANGAMON  
CHICAGO, ILLINOIS 60620

PTN: 25-05-404-004; 25-05-416-012; 25-05-416-015; 25-05-416-016;  
25-05-416-018; 25-05-416-021

LEGAL DESCRIPTION OF REAL PROPERTY:

THAT PART OF VACATED LOTS 17 TO 20 BOTH INCLUSIVE IN BLOCK 13 AND OF VACATED SOUTH GENOA AVENUE WEST OF AND ADJOINING SAID LOTS DESCRIBED AS FOLLOWS:

COMMENCING AT THE POINT OF INTERSECTION OF THE WEST LINE OF THE EAST 200.00 FEET OF SAID BLOCK 13 WITH THE SOUTH LINE OF SAID LOT 17; THENCE

CONTINUED ...

Property of Cook County Clerk's Office

DEC-29-89, FRI 11:03

P. 04

WEST ON SAID SOUTH LINE AND ITS WESTERLY EXTENSION 168.00 FEET THENCE NORTH PARALLEL WITH THE EAST LINE OF SAID BLOCK 200.0 FEET; THENCE EAST PARALLEL WITH THE SOUTH LINE OF SAID LOT 17 TO A POINT ON THE WEST LINE OF THE EAST 200.0 FEET OF SAID BLOCK; THENCE SOUTH ALONG SAID WEST LINE OF THE EAST 200.0 FEET OF SAID BLOCK TO THE POINT OF BEGINNING, ALL IN HALSTED STREET ADDITION TO WASHINGTON HEIGHTS, BEING A SUBDIVISION OF LOTS 1, 2 AND 3 OF THE SUBDIVISION OF THAT PART OF THE SOUTH EAST 1/4 OF SECTION 5, TOWNSHIP 37 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING EAST OF THE CHICAGO ROCK ISLAND AND PACIFIC RAILROAD, TOGETHER WITH LOTS 2, 3 AND 4 OF THE SUBDIVISION OF THAT PART OF THE NORTH EAST 1/4 OF SECTION 8, TOWNSHIP 37 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING EAST OF THE CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD, IN COOK COUNTY, ILLINOIS;

## PARCEL 2:

THAT PART OF BLOCKS 13 AND 14 AND PART OF VACATED SOUTH GENOA AVENUE ADJOINING AND LYING WEST OF BLOCK 13 AND EAST OF BLOCK 14 DESCRIBED AS FOLLOWS:

COMMENCING AT THE POINT OF INTERSECTION OF THE WEST LINE OF THE EAST 200.0 FEET OF SAID BLOCK 13 WITH THE SOUTH LINE OF LOT 17 IN SAID BLOCK 13; THENCE WEST ON SAID SOUTH LINE AND ITS WESTERLY EXTENSION 168.0 FEET; THENCE NORTH PARALLEL WITH THE EAST LINE OF SAID BLOCK 13, 200.0 FEET TO THE POINT OF BEGINNING OF THE LAND HEREIN DESCRIBED; THENCE CONTINUING NORTH ON THE LAST DESCRIBED COURSE 80.0 FEET; THENCE EAST PARALLEL WITH THE SOUTH LINE OF SAID LOT 17 AND ITS WESTERLY EXTENSION 158.0 FEET; THENCE SOUTH PARALLEL WITH THE EAST LINE OF SAID BLOCK 13 A DISTANCE OF 60.0 FEET; THENCE WEST 158.0 FEET TO THE POINT OF BEGINNING, ALL IN THE HALSTED STREET ADDITION TO WASHINGTON HEIGHTS, BEING A SUBDIVISION OF BLOCKS 1, 2 AND 3 OF THE SUBDIVISION OF THAT PART OF THE SOUTH EAST 1/4 OF SECTION 5, TOWNSHIP 37 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING EAST OF THE CHICAGO ROCK ISLAND AND PACIFIC RAILROAD, TOGETHER WITH LOTS 2, 3 AND 4 OF THE SUBDIVISION OF THAT PART OF THE NORTH EAST 1/4 OF SECTION 8, TOWNSHIP 37 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING EAST OF THE CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD, IN COOK COUNTY, ILLINOIS;

## PARCEL 3:

THAT PART OF BLOCKS 13 AND 14 AND PART OF VACATED SOUTH GENOA AVENUE ADJOINING AND LYING WEST OF BLOCK 13 AND EAST OF BLOCK 14 DESCRIBED AS FOLLOWS:

COMMENCING AT THE POINT OF INTERSECTION OF THE WEST LINE OF THE EAST 200.0 FEET OF SAID BLOCK 13 WITH THE SOUTH LINE OF LOT 17 IN SAID BLOCK 13; THENCE WEST ON SAID SOUTH LINE AND ITS WESTERLY EXTENSION 168.0 FEET; THENCE NORTH PARALLEL WITH THE EAST LINE OF SAID BLOCK 13 A DISTANCE OF 280.0 FEET TO THE POINT OF BEGINNING ON THE LAND HEREIN

DEC-29-89 FRI 11:03

P. 00

DESCRIBED; THENCE CONTINUING NORTH ON THE LAST DESCRIBED COURSE 95.68 FEET; THENCE NORTHEASTERLY ALONG A LINE FORMING AN ANGLE FROM THE NORTH TO THE EAST OF 24 DEGREES 55 MINUTES 10 SECONDS WITH THE PROLONGATION OF THE LAST DESCRIBED COURSE 81.61 FEET TO A POINT ON THE WESTERLY EXTENSION OF THE NORTH LINE OF BLOCK 13; THENCE EAST ALONG SAID LINE AND NORTH LINE OF BLOCK 13 TO A POINT ON THE WEST LINE OF THE EAST 200.0 FEET OF SAID BLOCK; THENCE SOUTH ALONG SAID WEST LINE 169.88 FEET TO A POINT 280.0 FEET NORTH OF THE SOUTH LINE OF LOT 17 IN SAID BLOCK 13; THENCE WEST ALONG A LINE PARALLEL WITH SAID SOUTH LINE OF LOT 17 AND ITS WESTERLY EXTENSION 168.0 FEET TO THE HEREIN DESIGNATED POINT OF BEGINNING, ALL IN HALSTED STREET ADDITION TO WASHINGTON HEIGHTS BEING SUBDIVISION OF LOTS 1, 2 AND 3 OF THE SUBDIVISION OF THAT PART OF THE SOUTH EAST 1/4 OF SECTION 5, TOWNSHIP 37 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING EAST OF THE CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD, TOGETHER WITH LOTS 2, 3 AND 4 OF SUBDIVISION OF THAT PART OF THE NORTH EAST 1/4 OF SECTION 8, TOWNSHIP 37 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING EAST OF THE CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD, IN COOK COUNTY, ILLINOIS;

## PARCEL 4:

EASEMENT FOR THE BENEFIT OF PARCEL 1 AFORESAID AS CREATED BY GRANT FROM CHICAGO ROCK ISLAND AND PACIFIC RAILROAD COMPANY A DELAWARE CORPORATION TO FRED P. TASNER AND BARBARA R. TASNER DATED FEBRUARY 14, 1961 AND RECORDED FEBRUARY 14, 1961 AS DOCUMENT NUMBER 13084345 FOR A PRIVATE DRIVEWAY ON, OVER AND ACROSS:

A TRACT OF LAND OVER A PART OF GENDA STREET, NOW VACATED AND A PART OF BLOCK 14, NOW VACATED ALL IN HALSTED STREET ADDITION TO WASHINGTON HEIGHTS, IN THE SOUTH EAST 1/4 OF SECTION 5, TOWNSHIP 37 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

(A) A 30.0 FOOT WIDE TRACT OF LAND, THE CENTER LINE OF SAID TRACT BEGINNING AT A POINT IN THE NORTH LINE OF THE WEST 94TH STREET SAID POINT OF BEGINNING BEING 41.75 FEET EASTERLY ALONG THE NORTH LINE OF SAID WEST 94TH STREET, FROM THE SOUTH EAST CORNER OF BLOCK 14; THENCE NORTHERLY PARALLEL TO THE EAST LINE OF BLOCK 14, 125.0 FEET TO A POINT; THENCE ON THE ALIGNMENT OF A 24 DEGREES 30 MINUTES CURVE TO THE LEFT 77.7 FEET TO THE POINT OF TANGENT; THENCE NORTHWESTERLY ON A LINE TANGENT TO SAID 24 DEGREES 30 MINUTES CURVE A DISTANCE OF 154.5 FEET TO A POINT SAID POINT BEING ON A LINE PROJECTED WESTERLY AND BEING PARALLEL WITH AND 200.0 FEET NORTHERLY FROM THE SOUTH LINE OF LOT 17, BLOCK 13, SAID POINT ALSO BEING THE TERMINATION POINT OF THE CENTER LINE DESCRIBED ABOVE; AND

(B) COMMENCING AT THE POINT OF INTERSECTION OF THE WEST LINE OF THE EAST 200.0 FEET OF BLOCK 13, OF SAID ADDITION WITH THE SOUTH LINE OF LOT 17 OF SAID BLOCK 13; THENCE WEST ON SAID SOUTH LINE EXTENDED WESTERLY 168.0 FEET TO THE POINT OF BEGINNING; THENCE NORTHERLY PARALLEL WITH THE EAST LINE OF SAID BLOCK 13, 200.0 FEET TO A POINT; THENCE WESTERLY PARALLEL WITH SAID SOUTH LINE OF LOT 17 EXTENDED TO A

## UNOFFICIAL COPY

DEC-29-89 FRI 11:04  
891

P. 08

POINT LYING 15 FEET EASTERLY OF AND MEASURED AT RIGHT ANGLES TO THE CENTER LINE OF THE 30 FOOT EASEMENT HERETOFORE DESCRIBED AS (A) ABOVE THENCE SOUTHEASTERLY PARALLEL WITH AND 15 FEET EASTERLY FROM SAID CENTER LINE TO A POINT IN THE SOUTH LINE OF SAID LOT 17 EXTENDED WESTERLY; THENCE EASTERLY TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS;

## PARCEL 5:

EASEMENT FOR THE BENEFIT OF PARCEL 2 AFORESAID AS CREATED BY GRANT FR. CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY A DELAWARE CORPORATION TO CHATHAM BANK OF CHICAGO A STATE BANKING ASSOCIATION, A TRUSTEE UNDER TRUST AGREEMENT DATED FEBRUARY 16, 1961 ALSO KNOWN AS TRUST NO. 172 DATED FEBRUARY 14, 1962 AND RECORDED FEBRUARY 23, 1962 DOCUMENT NUMBER 18408159 FOR A PRIVATE DRIVEWAY ON, OVER AND ACROSS: A TRACT OF LAND OVER A PART OF GENOA STREET, NOW VACATED AND A PART OF BLOCK 14, NOW VACATED, ALL IN HALSTED STREET ADDITION TO WASHINGTON HEIGHTS IN THE SOUTH EAST 1/4 OF SECTION 9, TOWNSHIP 37 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

(1) COMMENCING AT A POINT IN THE NORTH LINE OF WEST 94TH STREET, SAID POINT BEING 41.75 FEET EASTERLY ALONG THE NORTH LINE OF SAID WEST 94TH STREET, FROM THE SOUTH EAST CORNER OF BLOCK 14; THENCE NORTHERLY PARALLEL TO THE EAST LINE OF BLOCK 14 A DISTANCE OF 125.0 FEET TO A POINT; THENCE ALONG THE ALIGNMENT OF A 24 DEGREES 30 MINUTES CURVE TO THE LEFT, 97.9 FEET TO THE POINT TANGENT; THENCE NORTHWESTERLY ON A LINE TANGENT TO SAID 24 DEGREES 30 MINUTES CURVE A DISTANCE OF 159.5 FEET TO THE POINT OF BEGINNING OF A 30 FOOT WIDE TRACT OF LAND, THE CENTER LINE OF SAID TRACT BEGINNING ON A LINE PROJECTED WESTERLY AND BEING PARALLEL WITH AND 200.0 FEET NORTHERLY FROM THE SOUTH LINE OF LOT 17, BLOCK 13; THENCE CONTINUING NORTHWESTERLY 26.9 FEET TO A POINT; THENCE ON THE ALIGNMENT OF A 33 DEGREES 35 MINUTES CURVE TO THE RIGHT 53.3 FEET TO A POINT BEING ON A LINE PROJECTED WESTERLY AND BEING PARALLEL WITH AND 280.0 FEET NORTHERLY FROM THE SOUTH LINE OF LOT 17, BLOCK 13, SAID POINT ALSO BEING THE TERMINATION POINT OF THE CENTER LINE DESCRIBED ABOVE; AND

(2) COMMENCING AT THE POINT OF INTERSECTION OF THE WEST LINE OF THE EAST 200.0 FEET OF BLOCK 13 OF SAID ADDITION WITH THE SOUTH LINE OF LOT 17 OF SAID BLOCK 13; THENCE WEST ON SAID SOUTH LINE EXTENDED WESTERLY 153.0 FEET TO A POINT; THENCE NORTHERLY PARALLEL WITH THE EAST LINE OF SAID BLOCK 13, 200.0 FEET TO THE POINT OF BEGINNING OF THE LAND HERETOFORE DESCRIBED; THENCE WESTERLY PARALLEL WITH THE SOUTH LINE OF SAID LOT 17 EXTENDED TO A POINT LYING 15 FEET EASTERLY OF AND MEASURED AT RIGHT ANGLES TO THE CENTERLINE OF THE 30 FOOT EASEMENT HERETOFORE DESCRIBED IN (A) ABOVE; THENCE NORTHERLY ALONG A LINE LYING 15 FEET EASTERLY OF AND PARALLEL TO SAID CENTER LINE TO A POINT IN A LINE DRAWN 230.0 FEET NORTHERLY FROM AND PARALLEL WITH THE SOUTH LINE OF SAID LOT 17 EXTENDED; THENCE EASTERLY ALONG THE LAST DESCRIBED PARALLEL LINE TO A POINT IN A LINE DRAWN 358.0 FEET WESTERLY FROM AND PARALLEL WITH THE

DEC-29-89 FRI 1 5

P. 07

EAST LINE OF SAID BLOCK 13; THENCE SOUTHERLY ON A STRAIGHT LINE TO THE POINT OF BEGINNING,

EXCEPTING FROM THE FOREGOING PARCELS 4 AND 5 THOSE PARTS THEREOF FALLING IN THE FOLLOWING DESCRIBED PARCEL OF LAND:  
 COMMENCING AT A POINT IN THE NORTH LINE OF WEST 94TH STREET, SAID POINT BEING 26.11 FEET EAST OF THE SOUTH EAST CORNER OF VACATED BLOCK 14 IN HALSTED STREET ADDITION TO WASHINGTON HEIGHTS IN THE SOUTH EAST 1/4 OF SECTION 5, TOWNSHIP 37 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN; THENCE NORTHEASTERLY ALONG A LINE PARALLEL WITH THE CENTER LINE OF VACATED SOUTH GENOA AVENUE, 129.45 FEET TO A POINT OF CURVE; THENCE NORTHERLY ON A CURVE, HAVING A RADIUS OF 220.65 FEET, CONVEX TO THE EAST AN ARC DISTANCE OF 79.27 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING ALONG THE AFORESAID CURVE AN ARC DISTANCE OF 12.40 FEET TO A POINT OF TANGENCY; THENCE NORTHWESTERLY ALONG AND TANGENT TO THE AFORESAID CURVE, A DISTANCE OF 190.96 FEET TO A POINT OF CURVE; THENCE NORTHERLY ALONG A CURVE, HAVING A RADIUS OF 174.24 FEET, CONVEX TO THE WEST AN ARC DISTANCE OF 51.16 FEET TO THE INTERSECTION WITH THE NORTHERLY LINE OF VACATED LOT 4 IN AFORESAID VACATED BLOCK 14; THENCE SOUTHEASTERLY ALONG THE NORTHERLY LINE OF AFORESAID LOT 4, A DISTANCE OF 47.29 FEET TO THE INTERSECTION WITH A LINE 398.00 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF BLOCK 13 IN THE AFORESAID ADDITION; THENCE SOUTHERLY ALONG A STRAIGHT LINE A DISTANCE OF 239.50 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS;

PARCEL 5:

EASEMENT FOR THE BENEFIT OF PARCEL 3 AFORESAID AS CREATED BY GRANT FROM CHICAGO ROCK ISLAND AND PACIFIC RAILROAD COMPANY, A DELAWARE CORPORATION TO THE EXCHANGE NATIONAL BANK OF CHICAGO AS TRUSTEE UNDER TRUST NO. 16981 DATED DECEMBER 20, 1963 AND RECORDED DECEMBER 27, 1963 AS DOCUMENT NUMBER 19008850 FOR A PRIVATE DRIVE ON, OVER AND ACROSS: A TRACT OF LAND IN BLOCK 14 IN HALSTED STREET ADDITION TO WASHINGTON HEIGHTS BEING A SUBDIVISION OF LOTS 1, 2 AND 3 OF THE SUBDIVISION OF THAT PART OF THE SOUTH EAST 1/4 OF SECTION 5, TOWNSHIP 37 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:  
 COMMENCING AT THE POINT OF INTERSECTION OF THE WEST LINE OF THE EAST 200.0 FEET OF BLOCK 13 OF SAID ADDITION WITH THE SOUTH LINE OF LOT 17 (IN SAID BLOCK 13); THENCE WEST ON SAID SOUTH LINE AND ITS WESTERLY EXTENSION 108.0 FEET; THENCE NORTH PARALLEL WITH THE EAST LINE OF SAID BLOCK 13, A DISTANCE OF 280.0 FEET TO THE POINT OF BEGINNING OF THE LAND HEREIN DESCRIBED; THENCE CONTINUING NORTH ON THE LAST DESCRIBED COURSE 95.68 FEET; THENCE NORTHEASTERLY ALONG A LINE FORMING AN ANGLE FROM NORTH TO EAST OF 24 DEGREES 55 MINUTES 10 SECONDS WITH THE PROLONGATION OF THE LAST DESCRIBED COURSE 91.51 FEET TO A POINT ON THE NORTH LINE OF BLOCK 14, (WHICH IS THE WESTERLY EXTENSION OF THE NORTH LINE OF BLOCK 13); THENCE WEST ON THE NORTH LINE OF BLOCK 14 A DISTANCE OF 33.02 FEET; THENCE SOUTHWESTERLY AT AN ANGLE OF 114 DEGREES 42

MINUTES 30 SECONDS FROM THE LAST DESCRIBED COURSE A DISTANCE OF 81.61 FEET; THENCE SOUTHERLY A DISTANCE OF 105.0 FEET MORE OR LESS TO A POINT 280.0 FEET NORTH OF THE WESTERLY EXTENSION, OF THE SOUTH LINE OF LOT 1 IN SAID BLOCK 13 AND 239.0 FEET WEST OF THE EAST 200.0 FEET OF BLOCK 13; THENCE EAST ALONG A LINE PARALLEL WITH SAID SOUTH LINE OF LOT 17 AND ITS WESTERLY EXTENSION A DISTANCE OF 71.0 FEET TO THE HEREIN DESIGNATED POINT OF BEGINNING ALL IN COOK COUNTY, ILLINOIS;

## PARCEL 1.

A TRACT OF LAND WHICH INCLUDES PORTIONS OF VACATED SOUTH GENDA AVENUE (FORMERLY LOGAN AVENUE) AND VACATED WEST 93RD STREET TOGETHER WITH THE PART OF VACATED LOTS AND ALLEYS IN BLOCK 14; ALL IN HALSTED STREET ADDITION TO WASHINGTON HEIGHTS IN THE SOUTH EAST 1/4 OF SECTION 5, TOWNSHIP 37 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, AND PORTIONS OF VACATED SOUTH MORGAN STREET AND VACATED WEST 92ND STREET TOGETHER WITH THAT PART OF VACATED LOTS AND ALLEYS IN BLOCKS 4 AND 5 IN CENTRAL ADDITION TO SOUTH ENGLEWOOD; BEING A RESUBDIVISION OF BLOCKS 2 TO 8 INCLUSIVE OF HALSTED ADDITION TO WASHINGTON HEIGHTS, AS AFOREMENTIONED, (PARTS OF WHICH WERE VACATED BY INSTRUMENTS DATED OCTOBER 15, 1889 AND RECORDED IN THE RECORDER'S OFFICE OF COOK COUNTY, ILLINOIS ON OCTOBER 19, 1889, BOOK 2706, PAGES 163 AND 164 AS DOCUMENT 1172533 AND 1172534) DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT WHICH IS THE SOUTH WEST CORNER OF LOT 16, BLOCK 1 OF HALSTED STREET ADDITION TO WASHINGTON HEIGHTS; THENCE NORTHEASTERLY ALONG THE WEST LINE OF LOT 16 TO THE NORTH WEST CORNER OF LOT 16; THENCE CONTINUING NORTHEASTERLY ALONG AN EXTENSION OF THE WEST LINE OF LOT 16 TO A POINT, SAID POINT BEING 187.37 FEET NORTHEASTERLY OF THE SOUTH WEST CORNER OF LOT 16 AS MEASURED ALONG THE WEST LINE AND ITS EXTENSION; THENCE WEST ON A LINE PARALLEL WITH AND 16 FEET NORTH OF THE NORTH LINE OF LOT 16 A DISTANCE OF 9.25 FEET TO A POINT; THENCE NORTH ON A LINE 358 FEET WEST OF AND PARALLEL WITH THE WEST LINE OF SOUTH SANGAMON STREET A DISTANCE OF 375.68 FEET TO A POINT; THENCE NORTHEASTERLY A DISTANCE OF 81.61 FEET TO A POINT IN A LINE WHICH IS THE WESTERLY EXTENSION OF THE SOUTH LINE OF WEST 93RD STREET, SAID POINT BEING 333.62 FEET WEST OF THE WEST LINE OF SOUTH SANGAMON STREET AS MEASURED ALONG SAID SOUTH LINE; THENCE EAST ALONG SAID EXTENSION OF THE SOUTH LINE OF WEST 93RD STREET A DISTANCE OF 333.62 FEET TO THE WEST LINE OF SOUTH SANGAMON STREET; THENCE NORTH ALONG THE WEST LINE OF SOUTH SANGAMON STREET A DISTANCE OF 66 FEET; THENCE WEST ALONG A LINE WHICH IS THE WESTERLY EXTENSION OF THE NORTH LINE OF WEST 93RD STREET A DISTANCE OF 200 FEET TO A POINT; THENCE NORTH ALONG A LINE WHICH IS 20 FEET WEST OF AND PARALLEL WITH THE WEST LINE OF SOUTH SANGAMON STREET A DISTANCE OF 630 FEET TO A POINT; THENCE EAST ALONG A LINE WHICH IS THE WESTERLY EXTENSION OF THE SOUTH LINE OF WEST 92ND STREET A DISTANCE OF 200 FEET TO THE WEST LINE OF SOUTH SANGAMON STREET; THENCE NORTH ALONG THE WEST LINE OF SOUTH SANGAMON STREET A DISTANCE OF 66 FEET; THENCE WEST ALONG A LINE WHICH IS THE WESTERLY EXTENSION OF THE NORTH LINE OF

DEC 29 - 89 FRI 11 06

09102

WEST 92ND STREET A DISTANCE OF 255.5 FEET TO A POINT, SAID POINT BEING 100 FEET EASTERLY OF THE EASTERLY LINE OF VINCENNES ROAD AS MEASURED AT RIGHT ANGLE; THENCE SOUTHWESTERLY ON A LINE 100 FEET EASTERLY OF, AS MEASURED AT RIGHT-ANGLE, AND PARALLEL WITH THE EASTERLY LINE OF VINCENNES ROAD TO A POINT OF INTERSECTION WITH THE NORTH LINE OF WEST 94TH STREET; THENCE EAST ALONG THE NORTH LINE OF WEST 94TH STREET A DISTANCE OF 260.09 FEET TO THE SOUTH WEST CORNER OF LOT 16 IN BLOCK 13 BEING THE POINT OF BEGINNING,

EXCEPTING FROM THE ABOVE DESCRIBED TRACT, THAT INTEREST DESCRIBED IN A QUITCLAIM CONVEYANCE BY GRANTORS JOSEPH B. FLEMING AND AARON COUNON, TRUSTEES OF THE ESTATE OF THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY TO WARREN FRED WILHELM IN AN INSTRUMENT DATED SEPTEMBER 2, 1944 RECORDED BOOK 37792 PAGE 291, DOCUMENT 12960527 AND SUBSEQUENT CORRECTION DEED DATED JULY 18, 1944 AS FOLLOWS:

ALL THAT PART OF BLOCK 14 NOW VACATED IN HALSTED STREET ADDITION TO WASHINGTON HEIGHTS, IN THE SOUTH EAST 1/4 OF SECTION 5, TOWNSHIP 37 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN THE CITY OF CHICAGO COUNTY OF COOK AND STATE OF ILLINOIS; AND ALL THAT PART OF VACATED LOGAN AVENUE ADJOINING SAID BLOCK 14, NOW VACATED, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE NORTH LINE OF WEST 94TH STREET IN THE CITY OF CHICAGO, AT THE SOUTH EAST CORNER OF SAID BLOCK 14 NOW VACATED; THENCE EAST ALONG THE NORTH LINE OF SAID WEST 94TH STREET A DISTANCE OF 20.2 FEET; THENCE NORTHEASTERLY ALONG A STRAIGHT LINE, A DISTANCE OF 170.01 FEET TO A POINT IN THE SOUTH LINE OF THE EAST AND WEST ALLEY IN BLOCK 13 OF SAID HALSTED STREET ADDITION TO WASHINGTON HEIGHTS, EXTENDED WEST, WHICH IS 18.7 FEET EAST OF THE EASTERLY LINE OF SAID BLOCK 14, NOW VACATED, MEASURED ALONG THE SOUTH LINE OF SAID ALLEY EXTENDED WEST; THENCE WEST ALONG THE SOUTH LINE OF SAID EXTENDED ALLEY A DISTANCE OF 115 FEET TO A POINT WHICH IS 31.11 FEET EAST OF THE SOUTHEASTERLY LINE OF THE RIGHT OF WAY OF THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY, MEASURED ALONG THE SOUTH LINE OF SAID ALLEY EXTENDED WEST; THENCE SOUTHWESTERLY ALONG A STRAIGHT LINE A DISTANCE OF 170.01 FEET TO A POINT IN THE NORTH LINE OF WEST 94TH STREET, WHICH IS 82.65 FEET EAST OF THE SOUTHEASTERLY LINE OF THE RIGHT OF WAY OF THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY, MEASURED ALONG THE NORTH LINE OF WEST 94TH STREET; THENCE EAST ALONG THE NORTH LINE OF WEST 94TH STREET, 94.9 FEET TO POINT OF BEGINNING,

ALSO EXCEPTING FROM THE FIRST ABOVE DESCRIBED TRACT, THAT INTEREST DESCRIBED IN A QUITCLAIM CONVEYANCE BY GRANTOR, CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY TO EDITH F. ESINGER IN AN INSTRUMENT DATED DECEMBER 30, 1974 AS FOLLOWS:

BEGINNING AT A POINT IN THE NORTH LINE OF WEST 94TH STREET, SAID POINT BEING 20.20 FEET EAST OF THE SOUTH EAST CORNER OF AFORESAID VACATED BLOCK 14; THENCE NORTHEASTERLY ALONG A STRAIGHT LINE A DISTANCE OF 170.01 FEET TO A POINT IN THE SOUTH LINE, EXTENDED WEST OF THE EAST A



UNOFFICIAL COPY

DEPT-29-89, FRI 11:01

WEST ALLEY IN BLOCK 13 OF AFORESAID HALSTED STREET ADDITION TO WASHINGTON HEIGHTS, SAID POINT BEING 18.70 FEET EAST OF THE EASTERLY LINE OF AFORESAID BLOCK 14 AS MEASURED ALONG THE SOUTH LINE, EXTENDED WEST OF THE AFORESAID EAST AND WEST ALLEY, SAID POINT BEING THE POINT OF BEGINNING; THENCE NORTHEASTERLY ALONG A STRAIGHT LINE FORMING AN ANGLE FROM WEST TO NORTHEASTERLY OF 95 DEGREES 59 MINUTES 30 SECONDS WITH THE PROLONGATION OF THE SOUTH LINE EXTENDED WEST OF THE AFORESAID EAST AND WEST ALLEY, A DISTANCE OF 278.75 FEET TO A POINT ON THE NORTHERLY LINE OF VACATED LOT 4 IN AFORESAID VACATED BLOCK 14; THENCE NORTHWESTERLY ALONG THE NORTHERLY LINE OF AFORESAID VACATED LOT 4 A DISTANCE OF 51.67 FEET TO A POINT, SAID POINT BEING 10.00 FEET SOUTHEASTERLY OF AND MEASURED PERPENDICULAR TO THE CENTERLINE OF A CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY SPUR TRACK; THENCE SOUTHWESTERLY ALONG A STRAIGHT LINE 10.00 FEET SOUTHEASTERLY OF AND PARALLEL WITH THE CENTERLINE OF THE AFORESAID SPUR TRACK A DISTANCE OF 19.24 FEET TO A POINT; THENCE SOUTHEASTERLY ALONG A STRAIGHT LINE BEING PERPENDICULAR TO THE LAST DESCRIBED COURSE A DISTANCE OF 2.00 FEET TO A POINT; THENCE SOUTHWESTERLY ALONG A CURVED LINE, CONVEX TO THE NORTH WEST AND HAVING A RADIUS OF 502.15 FEET, AN ARC DISTANCE OF 38.66 FEET TO A POINT OF TANGENCY, THENCE NORTHEASTERLY ALONG A STRAIGHT LINE BEING PERPENDICULAR TO THE AFORESAID TANGENT A DISTANCE OF 2.00 FEET TO A POINT, SAID POINT BEING 10.00 FEET SOUTHEASTERLY OF AND MEASURED PERPENDICULAR TO THE CENTERLINE OF THE AFORESAID SPUR TRACK; THENCE SOUTHWESTERLY ALONG A STRAIGHT LINE 10.00 FEET SOUTHEASTERLY OF AND PARALLEL WITH THE CENTERLINE OF THE AFORESAID SPUR TRACK A DISTANCE OF 198.46 FEET TO A POINT IN THE SOUTH LINE EXTENDED WEST OF THE AFORESAID EAST AND WEST ALLEY; THENCE EAST ALONG THE SOUTH LINE, EXTENDED WEST OF THE AFORESAID EAST AND WEST ALLEY A DISTANCE OF 115.00 FEET TO THE POINT OF BEGINNING, ALL IN COOK COUNTY, ILLINOIS.

PARCEL 9:

THE EAST 200 FEET OF THE FOLLOWING TAKEN AS A TRACT: VACATED LOTS 1 TO 9, INCLUSIVE, 17 TO 24, INCLUSIVE, AND THE VACATED PUBLIC ALLEY LYING BETWEEN SAID LOTS, IN BLOCK 13 OF HALSTED STREET ADDITION TO WASHINGTON HEIGHTS, BEING A SUBDIVISION OF LOTS 1, 2 AND 3 OF THE SUBDIVISION OF THAT PART OF THE SOUTH EAST 1/4 OF SECTION 5, TOWNSHIP 37 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN LYING EAST OF THE CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD, TOGETHER WITH LOTS 2, 3 AND 4 OF THE SUBDIVISION OF THAT PART OF THE NORTH EAST 1/4 OF SECTION 5-17014 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING EAST OF THE CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD IN COOK COUNTY, ILLINOIS.