

UNOFFICIAL COPY 99021050

8883/0542 03 001 Page 1 of 20

1999-01-08 15:34:44

Cook County Recorder 59.00



99021050

**MORTGAGE**

① 77-90-992 NSC CTI MtProspect 20

THIS MORTGAGE, made this 23rd day of December, 1998, by Alexander Gabriel and Helene Gabriel, his wife, (hereinafter called "Mortgagor") to THE FIRST COMMERCIAL BANK, having a business address at 6945 N. Clark Street, Chicago, Illinois 60626, (herein sometimes called "Mortgagee");

WITNESSETH:

WHEREAS, Mortgagor has this day borrowed and is justly indebted to THE FIRST COMMERCIAL BANK, in the amount of TWO HUNDRED EIGHTY FOUR THOUSAND DOLLARS AND NO/100THS (\$284,000.00), evidenced by its certain Promissory Note(s), (hereinafter referred to as "the note") of even date herewith, payable to the order of THE FIRST COMMERCIAL BANK, the form of which is hereto attached and made a part of this Mortgage as Exhibit "A".

NOW, THEREFORE, in order to secure the payment of the principal of and interest on said note from time to time; therein set forth, according to the tenor, purport and effect thereof, and to secure the performance and observance by Mortgagor of every covenant and condition herein contained, and for and in consideration of the premises and of the debt above described, and the sum of ONE DOLLAR (\$1.00) duly paid by Mortgagee on or before the execution of this Mortgage, and for other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged by Mortgagor, the said Mortgagor by these presents does hereby grant, bargain and sell, mortgage, convey and confirm, assign, transfer and set over unto said Mortgagee and unto its successors and assigns, the real estate, chattels real, personal property, and other properties, interests and rights (hereinafter collectively sometimes referred to as "mortgaged property") all as described and set forth in Exhibit "B", hereto attached and made a part of this Mortgage.

TOGETHER with---

1. all buildings, improvements and structures at any time, now or hereafter, erected, situated or placed thereon;
2. all rights, privileges, easements, hereditaments, appendages and appurtenances thereunto belonging or in anywise appertaining:

**BOX 333-CTI**

# UNOFFICIAL COPY

99021050

3. all right, title, interest and estate of Mortgagor in and to streets, roads, ways, sidewalks, curbs, alleys and areas adjoining said real estate and portions thereof, and whether vacated by law or ordinance (conditionally or otherwise);
4. all rents, revenues, income, issues and profits, which are hereby specifically assigned, transferred and pledged primarily and on a parity with said real estate;
5. all fixtures, fixed assets, and personalty of a permanent nature owned by Mortgagor now or at any time hereafter annexed, affixed or attached to said real estate and/or said buildings, improvements or structured thereon and used or intended to be used in the possession, occupation or enjoyment thereof, and all replacements, additions and substitutions thereof or thereto, including, but without limiting the generality of the foregoing, all apparatus, appliances, machinery, equipment and articles used to supply or provide or in connection with heat, gas, air-conditioning, plumbing, water, lighting, power, elevator, sewerage, refrigeration, cooling, ventilation, sprinkler system and water heater, all of which described in this item (5) shall be part of the freehold and a portion of the security for the obligation hereinabove described; and
6. a first security interest in all furniture, furnishings, machinery, equipment, inventory, good will and personal property belonging to Mortgagor, and all additions to and replacements thereof, which are located on the mortgaged premises and used by Mortgagor or the tenants and occupants of said premises, in the course of the operation and use thereof.

TO HAVE AND TO HOLD the said mortgaged property and every part thereof unto said Mortgagee and unto its successors and assigns, forever, to secure the payment of the note and debt above described and the performance of the covenants and agreements herein undertaken to be performed by Mortgagor, and if Mortgagor shall fully pay the note and all other debts secured hereby, and shall perform all of the covenants and agreements to be performed by Mortgagor hereunder and under the note, then this Mortgage and the estate created hereby shall be void.

## I.

Mortgagor represents (i) that it is lawfully seized and possessed of a good and indefeasible title and estate in fee simple to the real estate and improvements thereon, hereinabove described (except as otherwise herein described) and Mortgagor will forever warrant and defend the title to said mortgaged property and every part thereof unto Mortgagee against the claims and demands of all persons whomsoever; (ii) that the mortgaged property and every part thereof is free and clear of all liens, encumbrances and charges of every kind and character, including liens for general and special taxes and assessments, excepting taxes for the current year which are not yet due, and excepting the lien of this Mortgage.

## II.

Mortgagor hereby expressly represents, covenants and agrees with Mortgagee that:

1. Mortgagor will duly pay said note above described and each and every installment payment therein provided to be paid, and interest on said note, punctually as and when the same shall

# UNOFFICIAL COPY

99021050

become due and payable according to the true intent and purport thereof; without relief from valuation or appraisal laws.

2. (a) Mortgagor will monthly pay to Mortgagee, in addition to the principal and interest payments required in said note, and in addition to other amounts herein provided, a sum equal to one-twelfth (1/12) of the annual premiums for insurance carried on the mortgaged property or otherwise required to be carried hereunder, together with one-twelfth (1/12) of the annual taxes and assessments on the mortgaged property, all as shall be estimated by Mortgagee, and also (if this is a leasehold mortgage), one-twelfth (1/12) of the annual ground rent. The sums paid under this paragraph shall be held by Mortgagee, without interest, and shall be applied by Mortgagee to the payment of the expenses for which sums respectively were deposited, as and when said expenses shall become due and before the same shall become delinquent, upon the request of Mortgagor for such payment and the presentation by Mortgagor to Mortgagee of a bill covering such expense;
- (b) As further security for the indebtedness secured hereby and in confirmation of the grant of a security interest made herein, Mortgagor will execute and deliver or cause to be executed and delivered security agreements in form satisfactory to Mortgagee, giving to said Mortgagee a first security interest in the furniture, furnishings, good will, machinery, inventory, equipment, fixtures and all other items of personal property located on the mortgaged premises and used by Mortgagor in the operation of its business, and all additions to and replacements thereof. If Mortgagee shall from time to time require new security agreements to the end that the indebtedness shall at all times be secured by a first lien on said personal property, then Mortgagor shall execute and deliver said security agreements or cause the same to be executed and delivered to Mortgagee. Mortgagor will execute or cause to be executed such financing statements as may be required from time to time under the Uniform Commercial Code in order to make said lien effective. If said Mortgagor shall fail to execute any security agreement or financing statement, then any officer or agent of the Mortgagee shall have the right, power, and authority to execute said instruments on behalf of Mortgagor, and this agency shall not be revocable since it is coupled with an interest.
3. Mortgagor will provide to Mortgagee, within 31 days of the close of each calendar year, a personal financial statement and cash flow statement reflecting the current income and expenses relating to the lease and rental of the subject real estate. It shall be considered an event of default under this Mortgage if Mortgagor does not comply with these requirements.
4. Mortgagor will promptly pay and discharge, or cause to be paid and discharged, all taxes, general and special levies, charges and assessments of every kind which may have been or shall be lawfully charged or assessed against the mortgaged property, or any part thereof, or which may become a lien thereon, or on or against any interest in said mortgaged property, or any part thereof, and will duly pay and discharge all taxes, assessments and governmental charges against Mortgagor, including, but not by way of limitation, income taxes, social security taxes and unemployment taxes, as well as all claims for labor, materials and supplies, which if unpaid might by law or proceedings become a lien or charge upon any of the mortgaged property, and upon the request of Mortgagee, Mortgagor will furnish satisfactory evidence of the payment and discharge of any of the foregoing items, and Mortgagor will not suffer or permit any property

subject hereto to be sold for any taxes or assessments or to be forfeited therefor; provided, however, Mortgagor may in good faith contest the validity thereof, and in case of such contest provide for the payment thereof in a manner satisfactory to Mortgagee;

5. Mortgagor will not, without prior written consent of Mortgagee, create or permit or allow to exist or to be created any mortgage, deed of trust, pledge or other lien or encumbrance on any of said mortgaged property, other than this Mortgage, and Mortgagor will not suffer or permit any mechanics' or materialmen's lien or any other lien of any nature whatsoever to attach to any of said mortgaged property or to remain outstanding against same or any part thereof; provided, however, Mortgagor may in good faith contest the validity thereof, and in case of such contest provide for the payment thereof in a manner satisfactory to Mortgagee;
6. Mortgagor will at all times keep the mortgaged property and every part thereof in good repair and condition, without any liability of Mortgagee to any person for damage for failure to repair or for any other cause, and Mortgagor will from time to time make all needful and proper repairs, restorations, renewals and replacements thereof, so that at all times the value of the security and the efficiency of the mortgaged property and every part thereof shall be fully preserved and maintained, and the Mortgagor will not permit waste or allow the mortgaged property, or any part thereof, to depreciate in value by any act or neglect;
7. Mortgagor will not use or permit to be used the mortgaged property or any part thereof in any manner inconsistent with the rights of Mortgagee hereunder, or in violation of the provisions of any insurance policy or any rules or regulations of insurance underwriters, and in the use of said mortgaged property will comply with, or cause to be complied with, all valid laws, ordinances, rules, regulations, orders and directions of any legislative, executive, administrative or judicial body, officer or department applicable to the mortgaged property or to the uses and purposes thereof, and will maintain and use the mortgaged property in full compliance therewith and in condition requisite thereunto;
8. (a) Mortgagor shall at all times, at the cost and expense of Mortgagor, keep all of the mortgaged property of an insurable nature constantly insured against loss or damage by fire, lightning, explosion, tornado and windstorm, and such other risks a Mortgagee may reasonably request, in an amount at least sufficient to pay all unpaid indebtedness secured hereby, and such insurance shall also be in a sum equal to such percentage of the insurable value of the property insured as may be required to prevent Mortgagor from being considered as co-insurer thereof; such insurance to be in companies satisfactory to Mortgagee, and all such policies of insurance shall be so written as to make any loss occurring thereunder payable by standard mortgage clause attached thereto to Mortgagee as its interest may appear, irrespective of, and which may not be invalidated by, any act or default of Mortgagor, and all such policies, or a certificate or certificates of the insurers or of an insurance agency satisfactory to Mortgagee, showing that such policies, with such mortgage clauses are in force, shall be deposited with Mortgagee as additional security hereunder; and Mortgagor shall also maintain at the cost and expense of Mortgagor such public liability and other insurance as Mortgagee may reasonably request, insuring Mortgagor and Mortgagee against liabilities, claims, damages and losses to persons and property arising by reason of the use of the mortgaged property, or arising by reason of the conduct and operation of the business of Mortgagor;

# UNOFFICIAL COPY

99021050

(b) All insurance moneys received on account of any loss or damage to the mortgaged property, after deducting therefrom the reasonable charge or expenses paid or incurred in connection with the collection and disbursement of said moneys, may be used and applied for the purpose of paying the cost of repair, restoration or replacement of the mortgaged property damaged or destroyed if Mortgagor so elects and provides Mortgagee with assurances satisfactory to Mortgagee that all of said repair or restoration will be done within a reasonable time and that the necessary funds are available and adequate for that purpose. Whenever the term "satisfactory assurances" is used herein it shall have the above connotation. Otherwise said moneys shall be applied to the pre-payment or partial pre-payment of the installments of the note secured hereby in inverse order of the stated maturities thereof; and

(c) Mortgagor grants to Mortgagee, full power and authority to make proof of loss under any and all insurance policies, either in the name of Mortgagor or in the name of Mortgagee, and to adjust, settle, collect and receipt for all insurance, and to endorse for and in behalf and in the name of Mortgagor any check, draft or other instrument received therefor, and to collect the proceeds thereof, and also, if default shall occur hereunder, to collect and receipt for any unearned premiums and to apply same on the obligation secured hereby. In the event of foreclosure sale, any all insurance policies may be assigned without consent of Mortgagor, and Mortgagor authorizes Mortgagee to assign said policies to the purchaser or purchasers at such foreclosure sale, or if Mortgagee elects so to do, Mortgagee may collect any unearned premiums and apply the same on the obligation secured hereby;

9. In the event the mortgaged property, or any part thereof, be taken through condemnation proceedings or by virtue of the exercise of the right of eminent domain or pursuant to governmental action, any and all amounts awarded in any such condemnation proceeding for the taking of the mortgaged property, or any part thereof, are hereby assigned to and shall be paid to Mortgagee, and when received by Mortgagee, after deducting all reasonable charges in connection with the collection and disbursement thereof, may be used and applied for the purpose of paying the cost of replacement of that part of the mortgaged property so taken or for the repair or restoration of that part of the mortgaged property not so taken, if Mortgagor so elects and provides Mortgagee with satisfactory assurances, or otherwise applied to the pre-payment, or partial pre-payment, of the installments of the note secured hereby in inverse order of the stated maturities thereof;
10. Mortgagor will protect, save harmless and indemnify Mortgagee from and against any and all claims, liabilities, costs and expenses, of whatever nature, which may arise or result directly or indirectly, by reason of the use or occupation of the mortgaged property or any part thereof;
11. In the event that any part of the mortgaged property or any additions, betterments, substitutions or replacements shall be destroyed or damaged by any party or from cause whereby Mortgagor becomes entitled to indemnity therefor from any third person or persons, Mortgagor, for the considerations named, does hereby sell, assign and transfer to Mortgagee all of such sum or sums so due from any such third person or persons, and Mortgagee is hereby authorized to receive, collect and sue for the same, and Mortgagor hereby authorizes and directs that such sum or sums be paid to Mortgagee upon presentation of a duly certified copy hereof. Any and all sums received by Mortgagee hereunder, after deducting therefrom the reasonable charge or expenses



paid or incurred in connection with the collection and disbursement of said moneys, may be used and applied for the purpose of paying the cost of repair, restoration or replacement of the mortgaged property damaged or destroyed if Mortgagor so elects and provides Mortgagee with satisfactory assurances, or otherwise applied to the prepayment, or partial pre-payment, of the installments of the note secured hereby in inverse order of the stated maturities thereof;

12. If Mortgagor shall fail to pay any tax, assessment, lien or other charge against the mortgaged property, or any part thereof (unless Mortgagor shall be contesting payment thereof in good faith and shall have provided for payment thereof as above provided), or fails to maintain and pay for insurance as hereinabove provided, or fails to keep and perform any of the covenants and conditions herein required, Mortgagee shall be privileged, but shall not be obligated, to pay such tax, assessment, lien or other charge, or to redeem such property from any sale or foreclosure for taxes or assessments or liens, and may effect and pay for such insurance, pay any such obligations and make such other disbursements as are necessary or advisable in the opinion of Mortgagee, to cure any such default of Mortgagor hereunder, or to protect the lien or the rights of Mortgagee hereunder; any and all such sums of money advanced for such purposes, or any of them, by Mortgagee, shall be deemed as an additional principal sum secured by this Mortgage and shall be payable on demand with interest at the rate of seven and three quarters (7.75%) per cent per annum from the time so advanced, and failure on the part of Mortgagor to repay the amounts so advanced on demand shall constitute a default hereunder; provided, however, nothing herein contained shall be construed as requiring Mortgagee to effect such insurance or to advance or expend money for any of the purposes aforesaid.
13. The said Mortgagor does hereby waive appraisal and benefit of the homestead and exemption laws of any of the states in which the property herein referred to is located, insofar as they affect the said property herein referred to.
14. In the event this Mortgage mortgages any leasehold estates, then the Mortgagor represents, covenants and agrees:
  - (a) That the Mortgagor is presently the lessee by assignment under those certain Indentures of Lease heretofore described herein, and that Mortgagor is lawfully in possession thereunder of the mortgaged premises, and that the said Leases, and each of them, at the date of the delivery of this Mortgage, constitutes, in each case, a valid, subsisting grant of the leasehold estate for the term therein set forth, and that this Mortgage is lawfully executed in conformity with each of said Leases, and is, and will be kept, a first lien on the interest of the Mortgagor in each of said Leases and the premises covered thereby.
  - (b) That the Mortgagor will promptly pay all basic rents and rents by way of tax equivalent, as and when the same shall become due, and will make all other payments and disbursements, as and when the same shall become due under each of the said leases hereinbefore described, and will notify the Mortgagee immediately when each payment is made, and will, in every case, take a proper receipt for the rent so paid; and the Mortgagor will, in all respects, promptly and faithfully keep, perform and comply with all the terms, provision, covenants, conditions and agreements in each of said Leases to be kept, performed and complied with by the Lessee therein, and will not do, or permit anything to be done, the

doing of which, or omit or refrain from doing anything, the omission of which, will be a ground for declaring a forfeiture of said lease.

- (c) That the Mortgagor will give the Mortgagee immediate notice of any default under each of said Leases within its knowledge, or of the receipt by it of any notice of default from the Lessor, and furnish to the Mortgagee any and all information that it may request concerning the performance by the Mortgagor of the covenants of said Lease, or of this Mortgage, and will permit the Mortgagee, at all reasonable times, to make investigation or examination concerning such performance.

15. Mortgagee, or its agent, shall have the right from time to time, until this loan is repaid in full, to inspect all of the property belonging to Mortgagor and which are the subject matter of this Mortgage and the Security Agreements.

### III.

Prior to the occurrence of an event of default as hereinafter defined, Mortgagor shall be permitted to remain in full possession and control of the mortgaged property, and, subject to the provisions hereof, to manage, use and operate the mortgaged property and every part thereof with the rights and privileges thereto appertaining, but after the occurrence of an event of default, as hereinafter defined, Mortgagor, and all parties claiming by, through or under Mortgagor, shall and will surrender peaceable possession of said mortgaged property and every part thereof to Mortgagee immediately upon demand, and Mortgagee shall be entitled to sole and exclusive possession of said Mortgaged property and every part thereof, and to all rents, revenues, income and profits therefrom, with full right and authority to collect and receive the same, and after deducting all expenses and charges against said mortgaged property, shall apply the same as hereinafter provided.

### IV.

It is hereby expressly provided and agreed by Mortgagor that in the event any one or more of the following events, each of which shall be, and is hereby defined as an "event of default," shall occur, to-wit:

- (a) If default shall be made in the payment of any installment of said note secured hereby, or any interest thereon, as and when the same shall become due and payable, whether by reason of acceleration or otherwise; or
- (b) If default shall be made in the payment to Mortgagee of the sums required herein to be paid to cover insurance and taxes, as and when such payments are required to be made to Mortgagee; or
- (c) If default shall be made by Mortgagor in the due performance or observation of any covenant, agreement or condition herein contained or required to be performed or observed by Mortgagor, and such default shall continue for a period of thirty (30) days after the date of the mailing of a written notice addressed to Mortgagor at the address above set forth, or to such other address as may be designated by Mortgagor in written notice delivered to Mortgagee; or
- (d) If any warranty of Mortgagor contained herein shall prove to be in any material respect incorrect or if there shall be any other breach of any such warranty; or

- (e) If Mortgagor shall become insolvent or unable to pay debts owing by Mortgagor as they mature, or if Mortgagor shall file a voluntary petition in bankruptcy or a voluntary petition seeking reorganization or seeking to effect a plan or other arrangement with creditors, or shall file an answer admitting the jurisdiction of the court and the material allegations of any involuntary petition filed against Mortgagor pursuant to an Act of Congress relating to bankrupts, or if Mortgagor shall be adjudged bankrupt or shall make an assignment for the benefit of creditors or to an agent authorized to liquidate any substantial part of the assets of Mortgagor or shall apply for or consent to or acquiesce in the appointment of any receiver or trustee for Mortgagor or of a substantial part of the property owned by Mortgagor; or
- (f) If an order shall be entered pursuant to any Act of Congress relating to bankrupts or to any act purporting to be amendatory thereof approving an involuntary petition seeking reorganization of Mortgagor or seeking the appointment of any receiver or trustee for Mortgagor or of a substantial part of the property of Mortgagor or a writ or warrant of attachment or of distraint or any similar process shall be issued against a substantial part of the property of Mortgagor and such order is not vacated or such warrant of attachment or other similar process is not released or bonded within forty-five (45) days after levy; or
- (g) If any guarantor of the note secured by this Mortgage shall default in the performance of the provisions of his guarantee in any respect.

**THEN, AND IN EACH AND EVERY SUCH EVENT:**

1. The balance of the principal of the note then outstanding and unpaid and the accrued interest thereon shall, at the option of Mortgagee, become and be due and payable immediately, anything in said note or in this Mortgage to the contrary notwithstanding, and said principal sum then outstanding and unpaid shall bear interest at the rate of eleven and three quarters (11.75%) per cent per annum;
2. Upon demand, Mortgagor shall forthwith surrender to Mortgagee the actual possession of all of the mortgaged property and it shall be lawful (whether or not Mortgagor has so surrendered possession) for Mortgagee, either personally or by agents or attorneys, forthwith to enter into or upon the mortgaged property and to exclude Mortgagor, the agents and servants of Mortgagor, and all parties claiming by, through or under Mortgagor, wholly therefrom, and Mortgagee shall thereupon be solely and exclusively entitled to possession of said mortgaged property and every part thereof, and to use, operate, manage and control the same, either personally or by managers, agents, servants or attorneys, for the benefit of Mortgagee, to the fullest extent authorized by law; and upon every such entry, the Mortgagee may, from time to time, at the expense of the mortgaged property and every part thereof, make all necessary and proper repairs and replacements thereto and thereon, as to the Mortgagee may seem judicious;
3. Mortgagee may make demand for and collect and receive all rents and income from the mortgaged property, including rents and income accrued but unpaid prior to the date of such default, and the receipt of Mortgagee therefor shall be binding on Mortgagor with respect to the amount so paid. All sums of money received by Mortgagee from rents and income, after deducting therefrom the reasonable charges and expenses paid or incurred in connection with the collection and disbursement thereof, shall be applied to the payment of the note secured hereby, or applied to remedy any default



hereunder, as Mortgagee may direct. Any lessee of the mortgaged property, or any part thereof, shall be fully protected in relying and acting upon the written statement of Mortgagee to the effect that this Mortgage is in default and that Mortgagee is entitled to receive the rents and income hereunder, notwithstanding any notice to or knowledge of said lessee to the contrary. Said lessee shall have no duty to determine that any sum paid to Mortgagee hereunder is properly applied by Mortgagee; and

4. Mortgagee may proceed by suit or suits at law or in equity, as Mortgagee may be advised by counsel, to enforce the payment of said note or to foreclose this Mortgage, and in such event Mortgagee shall be entitled to a reasonable fee for its service and the services of its attorneys and agents, and for all expenses, costs and outlays. Upon or at any time after the filing of any suit to foreclose the lien hereof, Mortgagee shall be entitled, as a matter of right, to the appointment of a receiver of the mortgaged property, either before or after sale, without notice and without regard to the solvency of Mortgagor at the time of application for such receiver, and without regard to the then value of the mortgaged property, and Mortgagee, may be appointed as such receiver. Such receiver shall have power to collect the rents, issues and profits from the mortgaged property and all other powers necessary or incidental for the protection, possession, control, management and operation of the mortgaged property.

## V.

Upon a sale or sales made by virtue of any judicial proceedings: (i) the whole of the mortgaged property, real, personal and mixed, may be sold in one parcel as an entirety, or the mortgaged property may be sold in separate parcels as may be determined by Mortgagee in its decision; and (ii) at any such sale or sales Mortgagee may bid for and purchase the mortgaged property or any part thereof and may make payment therefor by presenting the note hereby secured so that there may be endorsed as paid thereon the amount of such bid which is to be applied to the payment of said note as herein provided.

## VI.

In the event of foreclosure of this Mortgage by any methods herein provided, the Mortgagor does hereby waive any and all rights of redemption or appraisal, and consents that sale of said property may be made as a whole or in parcels.

## VII.

Upon the foreclosure and sale of the mortgaged property, or any part thereof, the proceeds of such sale or sales shall be applied as follows: First, to reasonable attorney's fees, court costs and expenses, outlays for documentary stamps, cost to procuring title certificates, continuing abstracts, title searches or examinations reasonably necessary or proper; and next, to the payment of any all advances made by Mortgagee, with interest thereon as hereinabove provided; next, to the payment of the balance of the indebtedness evidenced by the note secured hereby, with interest thereon as therein provided; and any surplus thereafter shall be paid to Mortgagor; provided that in the event the net proceeds of such sale or sales shall not be sufficient to pay in full the indebtedness hereby secured, Mortgagor hereby promises and agrees to pay any deficiency thereon on demand.

**VIII.**

No remedy herein conferred upon or reserved to Mortgagee is intended to be exclusive of any other remedy, but every remedy herein provided shall be cumulative, and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity, or by statute; and every power and remedy given by this Mortgagee may be exercised from time to time and as often as may be deemed expedient. No delay or omission by Mortgagee to exercise any right or power arising from any default shall impair any such right or power or shall be construed to be a waiver of any default or in acquiescence therein. In case Mortgagee shall have proceeded to enforce any right under this Mortgage by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned because of waiver or for any other reason, or shall have been determined adversely, then, and in such and every such case, Mortgagor and mortgagee shall severally and respectively be restored to their former positions and rights hereunder in respect of the mortgaged property, and all rights, remedies and powers of Mortgagee shall continue as though no such proceedings had been taken.

**IX.**

If any additional sum or sums shall become due and owing by Mortgagor to Mortgagee, pursuant to the provisions hereof, the affidavit of Mortgagee shall be sufficient evidence of the fact that such additional sums are secured hereby in the amount set forth in such affidavit.

**X.**

The term "Mortgagee" shall be deemed to mean and include the endorsee(s), transferee(s) or the holder(s) at the time being of the note hereinabove described, and the successor or successors and assigns of said Mortgagee, and the covenants and agreements shall bind and inure to the benefit of the heirs, successors and assigns of Mortgagor and all persons claiming under Mortgagor and the endorsee(s), transferee(s), successors and assigns of Mortgagee. Regardless of their form, all words shall be deemed singular or plural and shall have the gender required by the text.

**XI.**

In the event any part, portion or provision of this Mortgage or said note shall for any reason be illegal, invalid or unenforceable with respect to any class or part of the mortgaged property, then such part, portion or provision thereof shall be held to apply, and shall be applied, only to such property as to which it is legal, valid and enforceable; and such illegal, invalid or unenforceable part, portion or provision shall be deemed separate and severable from the remaining portion thereof, and such remaining portion thereof shall remain in full force and effect as to all the mortgaged property, the same as if such part, portion or provision thereof declared illegal, invalid or unenforceable had not been part thereof.

**XII.**

Mortgagee shall be entitled to own and hold by subrogation as additional security hereunder all mortgages, liens and other encumbrances which have been paid from the proceeds of this mortgage and note. Said mortgages, liens and other encumbrances shall be operative even though they are discharged of record in the same manner as

# UNOFFICIAL COPY

99021050

if they were assigned to the Mortgagee without cancellation of the instruments which evidence said mortgages, liens or other encumbrances, and as if they were not satisfied of record.

## XIII.

No extension of time granted by Mortgagee, for the payment of the indebtedness, and no modification of this Mortgage entered into by Mortgagee, and no release of any property hereunder or any change in the release prices or any increase in the amount of the indebtedness by reason of a future advance, shall affect or diminish the priority of this Mortgage as against any junior encumbrancer or against any grantee who has purchased part of the property subject to the Mortgage; and none of said acts shall affect the liability of the Mortgagor under the note or under this Mortgage.

## XIV.

The lien of this Mortgage shall secure all future loans and advances which may be made hereafter at the option of the Mortgagee and all extensions, renewals or modifications of the note, together with interest thereon.

## XV.

The loan secured hereby is made in reliance upon the ownership and management of Mortgagor of the mortgaged property. Therefore, if Mortgagor shall convey all or part of the mortgaged property (except to the extent permitted by the terms hereof) or if the management, ownership or control of Mortgagor shall change so that the present shareholders (if Mortgagor is a corporation), partners (if Mortgagor is a partnership) or owners (if Mortgagor is some other entity) shall relinquish or lose their present degree of such management, ownership or control, then all indebtedness secured hereby shall at once become due and payable at the option of the holder of said indebtedness. Insubstantial changes, or changes by reason of death or conveyances or assignments made to members of an owner's family, shall not operate to accelerate the indebtedness; but in the event of such changes this clause shall apply to the grantee or assignee as if he were the Mortgagor.

## XVI.

It is intended that this Mortgage shall be a first mortgage on the fee simple title of the real estate described in Exhibit "B" subject only to current general taxes not yet payable and to such title exceptions as are approved in writing by the Mortgagee, but nevertheless, free from all other liens and encumbrances and free from mechanics' liens. Title and freedom from such liens shall be insured by an ALTA mortgage title insurance policy issued by a title insurance company acceptable to the Mortgagee in the full amount of the loan.

## XVII.

This Mortgage and the Note which it secures, will not be assumable without the Note Holder's consent. Any sale, transfer, or further encumbrance, (including, but not limited to a contract sale, sale under articles of agreement for deed, or a transfer to a land trust), or any attempted sale, transfer, or further encumbrance of the undersigned's right, title, and interest to the property mortgaged hereunder, without said consent, shall render the entire note indebtedness immediately due and payable at the Note Holder's election.

# UNOFFICIAL COPY

99021050

IN WITNESS WHEREOF, this Mortgage has been executed and delivered this 23rd day of December, A.D., 1998.

X Alexander Gabriel  
Alexander Gabriel

X Helene Gabriel  
Helene Gabriel

STATE OF ILLINOIS )  
  )SS  
COUNTY OF COOK )

United Arab Emirates  
Consular District of the  
Consulate General of the  
United States of America  
at Dubai } S.S.

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY, that Alexander Gabriel, is personally known to me to be the same person(s) whose name(s) is/are subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that he/she/they signed, sealed and delivered the said instrument as his/her/their free and voluntary act for the uses and purposes therein set forth.

Given, under my hand and Notarial seal this \_\_\_\_\_ day of 04 JAN 1999

Austin Viehe  
Notary Public  
AUSTIN VIEHE  
VICE-CONSUL OF THE  
UNITED STATES OF AMERICA

MAIL TO:  
THE FIRST COMMERCIAL BANK  
6945 N. CLARK STREET  
CHICAGO, ILLINOIS 60626

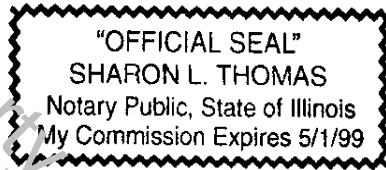
# UNOFFICIAL COPY

99021050

STATE OF ILLINOIS)  
                                  )SS  
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY, that Helene Gabriel, is personally known to me to be the same person(s) whose name(s) is/are subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that he/she/they signed, sealed and delivered the said instrument as his/her/their free and voluntary act for the uses and purposes therein set forth.

Given, under my hand and Notarial seal this 26th day of December, 1998.



*Sharon L. Thomas*  
Notary Public

PREPARED BY AND MAIL TO:

Alan M. Share  
THE FIRST COMMERCIAL BANK  
6945 N. Clark Street  
Chicago, Illinois 60626

MAIL TO:

THE FIRST COMMERCIAL BANK  
6945 N. CLARK STREET  
CHICAGO, ILLINOIS 60626



## PROMISSORY NOTE

\$284,000.00

December 23, 1998

### EXHIBIT "A"

FOR VALUE RECEIVED, the undersigned, Alexander Gabriel and Helene Gabriel, (herein called "Borrower"), hereby promises to pay to the order of The First Commercial Bank, an Illinois corporation, (and each successive from time to time owner and holder of this Note being herein generally called the "Holder") in the manner provided herein and in the Mortgage hereinafter referred to, the principal sum of

TWO HUNDRED EIGHTY FOUR THOUSAND AND NO/100 DOLLARS  
(\$284,000.00)

together with interest prior to maturity on the balance of principal remaining from time to time unpaid at the annual rate of

SEVEN AND THREE QUARTERS PERCENT  
(7.75%)

(herein called the "Regular Rate") and interest after maturity or an Event of Default (irrespective of any grace period) on such balances at the Default Rate hereinafter specified (in each case computed daily on the basis of a 360-day year of twelve (12) thirty (30) day months for each day all or any part of the principal balance hereof shall remain outstanding, principal and interest hereon being payable as hereinafter provided, without demand, counterclaims, offset, deduction or defense (whether now or hereafter conferred by structure or otherwise). (Subject to change depending on selected rate option).

The term "Default Rate" shall mean a rate per annum equal to Eleven and Three Quarters (11.75%) percent.

Without limiting any other provisions contained herein, the Holder of this Note may collect a "late charge" equal to five (5%) percent of any monthly installment which is not paid within 15 days of the due date thereof to defray the expenses incident to handling any such delinquent payment or payments. Such late charge shall be in addition to and separate from the increase in interest due hereunder as a result of calculation of interest due under this Note at the Default Rate.

Principal and interest upon this Note shall be paid as follows:

- a) Interest shall be paid by the Borrower at the time of initial disbursement of the proceeds hereof to Borrower or to an escrowee on the outstanding principal through the last day of the month in which initial disbursement takes place.
- b) Commencing on March 1, 1999, and on the first day of each and every month thereafter, to and including January 1, 2004, there shall be paid on account of principal and interest at the Regular Rate on this Note the sum of Two Thousand Three Hundred Thirty One and 49/100 (\$2,331.49) DOLLARS; and on the first day of February 1, 2004, (herein called

the "Maturity Date"), the entire outstanding principal balance of this Note, together with accrued and unpaid interest thereon, shall be due and payable.

- c) THIS A BALLOON NOTE AND ON THE MATURITY DATE A SUBSTANTIAL PORTION OF THE PRINCIPAL AMOUNT OF THIS NOTE WILL REMAIN UNPAID BY THE MONTHLY PAYMENTS ABOVE REQUIRED.

EXHIBIT "A"

All payments on account of the indebtedness evidenced hereby shall first be applied to amounts payable to Holder pursuant to this Note or other documents securing the Note, other than late charges, interest and principal payable under this Note; second, to any late charges payable pursuant to this Note; third, to interest on the unpaid principal balance hereof at either the Regular Rate or Default Rate, whichever is applicable; and the remainder shall be applied to principal. Provided, however, that from and after the occurrence of an Event of Default under the Note or any other documents securing the Note, the Holder shall have the right to apply payments made hereunder against any and all amounts payable hereunder or under any other document securing this Note in such order or manner as the Holder may, in its sole discretion, elect.

All funds disbursed hereunder by Holder by mail, wire transfer or other delivery to the Borrower or to escrowees for the benefit of Borrower shall be deemed outstanding hereunder and to have been received by Borrower as of the date of such mailing, wire transfer or other delivery, and interest shall accrue from and after such mailing, wire transfer or other delivery.

Payments upon this Note shall be made at such place as the Holder of this Note may from time to time in writing appoint, provided that in the absence of such appointment such payments shall be made at 6945 North Clark Street, Chicago, Illinois, 60626. All payments upon this Note shall be payable in lawful money of the United States of America which shall be legal tender for public and private debts at the time of payment. Funds paid hereunder shall be deemed received on the next business day if not received by 1:00 p.m., local time, at the location where payments are to be made.

This Note is given to evidence an actual loan (the "Loan") in the above amount and is the Note referred to in and secured by:

- a) a Mortgage (herein called the "Mortgage") to Holder bearing even date herewith, on certain real estate and personalty (herein called the "Premises") in Cook County, Illinois, granting to Holder a first lien on and first security interest in the Premises and all personalty and fixtures located on the Premises; and
- b) an Assignment of Rents (herein called the "Assignment") bearing even date herewith, assigning to Holder all of the rents, issues and profits of and from the Premises and certain leases thereof; and
- c) Uniform Commercial Code of Illinois - Article 9 - Financing Statements; and
- d) Other and sundry collateral instruments further securing the payment of the Loan.

The Note and all of the foregoing are referred to herein individually and collectively as the "Security Documents."

Up to 20% of the outstanding principal balance may be prepaid in any one year without penalty upon 30 days written notice to the Note Holder. The privilege is noncumulative. A 2% penalty will be applied to any prepayment in excess of the allowable amount.

The occurrence of any of the following events shall constitute a default by the Borrower ("Event of Default") under this Note:

- EXHIBIT "A"**
- a) If default be made for five (5) days in the due and punctual payment of principal or interest hereon when due in accordance with the terms hereof, without notice or grace period of any nature;
  - b) If Borrower fails to perform, keep or observe any term, provision, condition, covenant, warranty or representation contained in this Note which is required to be performed, kept or observed by Borrower after the lesser of thirty (30) days written notice from Holder or such period as specifically provided;
  - c) Occurrence of a default or of an Event of Default under the Mortgage (Deed of Trust) or the Security Documents or any other agreement, instrument or document heretofore, now or at any time hereafter delivered by or on behalf of Borrower to Holder which is not cured within the lesser of thirty (30) days after notice to Borrower or such lesser period as is provided therein;
  - d) The filing by Borrower or any guarantor of the Loan, of a request or a petition for liquidation, reorganization, adjustment of debts, arrangement, adjudication as a bankrupt, or similar relief under the bankruptcy, insolvency or similar laws of the United States or any state or territory thereof or any foreign jurisdiction; or the institution by Borrower or any guarantor of the Loan, of any formal or informal proceeding for the reorganization, dissolution or liquidation of, settlement of claims against or winding up of affairs of Borrower or any guarantor of the Loan; or the cessation by Borrower or any guarantor of the Loan, as a going business concern and failure by Borrower within 90 days to terminate, discharge or otherwise remove such proceeding;
  - e) The filing against Borrower or any guarantor of the Loan, of a request or a petition for liquidation, reorganization, adjustment of debts, arrangement, adjudication as a bankrupt or similar relief under the bankruptcy, insolvency or similar laws of the United States or any state or territory thereof or any foreign jurisdiction; or the institution by Borrower or any guarantor of the Loan, of any formal or informal proceeding for the reorganization, dissolution or liquidation of, settlement of claims against or winding up of affairs of Borrower; and the failure by Borrower or any guarantor of the Loan, within forty-five (45) days, to terminate, discharge or otherwise remove such proceeding.
  - f) The appointment of or authorization for a custodian trustee or receiver of Borrower or any guarantor of Loan, or for a trustee, custodian, receiver or agent to take charge of any

# UNOFFICIAL COPY

99021050

property of Borrower; provided, such custodian, trustee or receiver or agent shall not have been removed or otherwise discharged within forty-five (45) days of the date of his qualification.

- g) Borrower or any guarantor of the Loan shall make an assignment for the benefit of creditors or shall admit in writing its inability to pay its debts generally as they become due or shall consent to the appointment of a receiver or trustee or liquidation of all or a major part of Borrower's property, or the Premises.
- h) The transfer of title to any property or any part thereof by Borrower as debtor in possession under the Bankruptcy Code, or a trustee for Borrower under the Bankruptcy Code, to any third party, whether or not the obligations of Borrower under this Note are assumed by such third party.
- i) The institution of a foreclosure action against the Premises or any part thereof, or the filing of a lien against the Premises or any part thereof, which is not removed of record, bonded over, or insured over by title insurance, or dismissed within thirty (30) days after Borrower is notified by Holder or otherwise of such filing.
- j) If any of Borrower, or any guarantor of the Loan, shall change its name, identity, structure or employer identification number without notifying Holder and receiving Holder's consent to same.
- k) If the Premises shall be abandoned.

EXHIBIT "A"

Upon the occurrence of an Event of Default, Holder, at its option, without notice or demand by Holder to Borrower, except for such notice or grace periods as may be specifically provided in this Note or in the Security Documents: (i) may declare the principal sum remaining unpaid hereon, together with accrued interest thereon, immediately due and payable at the place provided for payment and the Holder shall have the right to foreclose the Mortgage and pursue any other legal remedy to which it is entitled pursuant to the Mortgage or any other Security Documents; (ii) may exercise any one or more of the rights and remedies accruing to a secured party under the Uniform Commercial Code of the relevant jurisdiction and any other applicable law upon default by a debtor; (iii) may enter, with process of law and without breach of the peace, any premises where the real or personal property secured by the Security Documents is or may be located, and may seize or remove same from said premises and/or remain upon said premises and use the same for the purpose of collecting, preparing and disposing of the real or personal property secured by the Security Documents; (iv) may sell or otherwise dispose of the property secured by the Security Documents at public or private sale for cash or credit; (v) may, regardless of the adequacy of any other collateral available to Holder, set-off any deposits or other sums credited by or payable or due from Holder to Borrower, or any monies, cash, cash equivalents, securities, instruments, documents or other assets of Borrower in possession or control of Holder or its bailee for any purpose which may be applied or reduced to cash and applied by Holder as a set-off by Holder against all sums due Holder under this Note or any other Security Documents; or (vi) may pursue any and all other remedies available under the Note or any Security Documents.



Upon an Event of Default, Borrower, immediately upon demand by Holder shall assemble the property secured by the Security Documents and make it available to Holder at a place or places to be designated by Holder which is reasonably convenient to Holder and Borrower.

Upon the occurrence of an Event of Default and acceleration of the maturity hereof, a tender of payment of the amount necessary to satisfy the indebtedness evidenced hereby whether such payment is tendered voluntarily during or after foreclosure of the Mortgage or pursuant to realization upon other security, shall constitute a purposeful evasion of the prepayment terms hereof, and it is agreed that any such tender of payment will be deemed to be a voluntary prepayment hereunder, and such payment will therefore be subject to and include the prepayment premium specified hereinabove. Such premium shall constitute liquidated damages payable to Holder on account of Borrower's breach of its agreements and Holder's loss of a benefit for which it bargained.

## EXHIBIT "A"

Borrower warrants and represents to Holder that Borrower shall use the proceeds represented by this Note solely for the purpose of owning and operating the business of Borrower and consistently with all applicable laws and statutes.

The parties hereto intend and believe that each provision in this Note comports with all applicable law. However, if any provision in this Note is found by a court of law to be in violation of any applicable law, and if such court should declare such provision of this Note to be unlawful, void or unenforceable as written, then it is the intent of all parties hereto that such provision shall be given full force and effect to the fullest possible extent that it is legal, valid and enforceable, that the remainder of this Note shall be construed as if such unlawful, void or unenforceable provision were not contained therein, and that the rights, obligations and interests of the Borrower and the Holder hereof under the remainder of this Note shall continue in full force and effect; provided, however, that if any provision of this Note which is found to be in violation of any applicable law concerns the imposition of interest hereunder, the rights, obligations and interests of Borrower and Holder with respect to the imposition of interest hereunder shall be governed and controlled by the provisions of the following paragraph.

It is the intent of Borrower and Holder to comply with the laws of the state in which the Premises is located with regard to the rate of interest charged hereunder, and accordingly, notwithstanding any provision to the contrary in this Note, the Mortgage, or any other document securing the Note, no such provision in any such instrument, including without limitation any provision of this Note providing for the payment of interest or other charges and any provision of the Security Documents providing for the payment of interest, fees, costs or other charges, shall require the payment or permit the collection of any amount (herein called "Excess Interest") in excess of the maximum amount of interest permitted by law to be charged for the use, detention, or forbearance in the collection, of all or any portion of the indebtedness evidenced by this Note; provided that if any Excess Interest is provided for, or is adjudicated as being provided for, in this Note, the Mortgage or any of the Security Documents, then in such event, the Borrower shall not be obligated to pay any Excess Interest and any Excess Interest received by Holder shall, at the option of Holder, be credited against the then outstanding principal balance or accrued and unpaid interest or be refunded to Borrower, or any combination thereof. Further, the applicable interest rate or rates shall be automatically subject to reduction to the maximum lawful rate allowed to be contracted for in writing under the applicable usury laws of the state in which the Premises is located as at the date of disbursement of the indebtedness evidenced hereby; and this Note and all other Security Documents shall be deemed to have been, and shall be, reformed and modified to reflect such reduction



in such interest rate or rates; and neither Borrower nor any other person shall have any action or remedy against Holder for any damages arising out of the payment or collection of any Excess Interest.

EXHIBIT "A"

All of the Holder's rights and remedies under this Note are cumulative, concurrent and non-exclusive and may be pursued singularly, successively or together, at the sole discretion of the Holder. The acceptance by Holder of any partial payment made hereunder will not establish a custom, or waive any rights of Holder to enforce prompt payment hereof. Holder's failure to require strict performance by Borrower of any provision of this Note shall not waive, affect or diminish any right of Holder thereafter to demand strict compliance and performance therewith. Any waiver of an Event of Default hereunder shall not suspend, waive or affect any other Event of Default hereunder. Borrower waives presentment, demand and protest and notice of presentment, protest, dishonor, default, non-payment, maturity, release, compromise, settlement, and consents to any and all extensions or renewals of this Note and diligence in taking any action to collect the indebtedness evidenced hereby, and hereby ratifies and confirms whatever Holder may do in this regard. Borrower further waives all notices in connection with the delivery and acceptance hereof and all other notices in connection with the performance, default or enforcement of the Note, to the extent permitted by law.

Borrower hereby expressly waives any and all rights of redemption, reinstatement or exemption rights and the benefit of valuation and appraisal privileges evidenced by this Note or the Mortgage securing this Note, on its own behalf and on behalf of each and every person, it being the intent hereof that any and all such rights of redemption of the Borrower and of all other persons are and shall be deemed to be hereby waived to the fullest extent permitted by law.

Borrower agrees to pay, upon Holder's demand therefor, any and all costs, fees and expenses, including reasonable attorneys' fees, costs and expenses incurred in enforcing any of Holder's rights hereunder, including but not limited to costs, fees, expenses and attorneys' fees incurred by reason of Borrower's Bankruptcy or any other matter whereby Holder retains counsel in order to effectuate compliance with the terms of this Note, or under the Security Documents.

This Note is submitted by Borrower to Holder at Holder's principal place of business and shall be deemed to have been made thereat. This Note shall be governed and controlled by the laws of the State of Illinois as to interpretation, enforcement, validity, construction, effect, choice of law and in all other respects. Borrower hereby consents and submits to the jurisdiction and venue of any local, state or federal court in the county of the state where the Premises is situated.

IN WITNESS WHEREOF, the undersigned have executed this Note as of the date first above written.

Alexander Gabriel

Helene Gabriel

EXHIBIT "A"  
EXHIBIT "A"

MAIL TO:  
THE FIRST COMMERCIAL BANK  
6945 N. CLARK STREET  
CHICAGO, ILLINOIS 60626

# UNOFFICIAL COPY

99021050

## Exhibit "B"

LOT 2 AND 3 IN DEVON COMPELL SUBDIVISION OF THE WEST ½ OF THE WEST ½ OF THE NORTHEAST ¼ OF THE NORTHEAST ¼ OF THE NORTHEAST ¼ OF SECTION 1, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Property Address: 2449 W. Devon Ave., Chicago, Illinois 60659

P.I.N.: 13-01-206-032-0000

MAIL TO:  
THE FIRST COMMERCIAL BANK  
6945 N. CLARK STREET  
CHICAGO, ILLINOIS 60626

Property of Cook County Clerk's Office