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39 S. LASALLE ST.  
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CHICAGO, IL 60603

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Cook County Recorder 81.00

1 of 2 # 77-96-871-Dz LMAH

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## SECOND MORTGAGE

THIS MORTGAGE, made as of this 15<sup>th</sup> day of February, 1999 by AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, not personally, but as Trustee under Trust Agreement dated February 16, 1998 and known as Trust No. 600495-09 (hereinafter referred to as the "First Party") and BEAR FLAG, INC., an Illinois corporation, ERIC KERLOW, individually, MATTHEW WILBUR, individually, and WILLIAM PLATT, individually (hereinafter collectively referred to as the "Maker") to SUCCESS NATIONAL BANK, a National Banking association (hereinafter together with its successors and assigns, including each and every from time to time holder of the Note referred to as the "Mortgagee").

### WITNESSETH:

WHEREAS, First Party is the owner and holder of fee simple title in and to all of the real estate described in Exhibit "A" attached hereto and by this reference made a part hereof which real estate forms a portion of Premises hereinafter described; and

WHEREAS, First Party and BEAR FLAG, INC., an Illinois corporation, ERIC KERLOW, individually, MATTHEW WILBUR, individually, and WILLIAM PLATT, individually (hereinafter collectively referred to as the "Maker") have concurrently herewith, executed and delivered the Promissory Note (hereinafter referred to as the "Note") bearing even date herewith, payable to the order of Mortgagee in the original principal sum of ONE MILLION TWO HUNDRED ELEVEN THOUSAND AND 00/100THS DOLLARS (\$1,211,000.00), bearing interest at the rate specified therein; and

WHEREAS, the (i) indebtedness evidenced by the Note, including the principal

BOX 333-CTI

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thereof and interest and premium, if any thereon, and all extensions or renewals thereof, in whole or in part, (ii) any further advances made by holder of the Note to First Party for any purpose set forth herein, or in any document executed in connection therewith, at any time, before the release and cancellation of this Mortgage, and (iii) all other sums which may be at any time due or owing or required to be paid as herein provided, all of which are herein sometimes called the "Indebtedness Hereby Secured", provided however, that the Indebtedness Hereby Secured shall not exceed a sum equal to two times the original principal amount of the Note.

NOW, THEREFORE, to secure the payment of the principal of and interest on the Note according to its tenor and effect, and to secure the payment of all other Indebtedness Hereby Secured, and performance and observance of all the covenants, agreements and provisions herein and in the Note contained, and in consideration of the premises and of the sum of \$10.00 paid to the First Party, and for other valuable consideration, the receipt and sufficiency whereof is hereby acknowledged by the First Party, the First Party DOES HEREBY GRANT, REMISE, MORTGAGE, RELEASE, ALIENATE AND CONVEY unto Mortgagee, its successors and assigns forever, the real estate described in Exhibit "A" attached hereto and by this reference made a part hereof (herein, together with the property mentioned in the next succeeding paragraphs hereto, referred to as the "Premises");

TOGETHER with all right, title and interest of First Party including any after-acquired title or reversion, in and to the rights of ways, streets, avenues and alleys adjoining the Premises;

TOGETHER with all regular and singular tenements, hereditaments, easements, appurtenances, passages, waters, water courses, riparian rights, other rights, liberties and privileges thereof or in any way now or hereafter appertaining, including any other claim at law or in equity as well as any after-acquired title, franchise or license, and the reversions and remainders thereof;

TOGETHER with all rents, income, receipts, revenues, issues, proceeds and profits accruing and to accrue from the Premises;

TOGETHER with all buildings and improvements of every kind and description now or hereafter erected or placed thereon and all materials intended for construction, reconstruction, alterations and repairs of such improvements now or hereafter erected thereon, all of which materials shall be deemed to be included within the Premises, and all fixtures and articles of personal property now or hereafter owned by First Party and attached to or contained in and used in connection with the Premises and/or the operation and convenience of any building or buildings and improvements located thereon, including, but without limitation, all furniture, furnishings, equipment, apparatus, machinery, motors, elevators, fittings and all plumbing, electrical, heating, lighting, ventilating, refrigerating, incineration, air conditioning and sprinkler equipment, systems, fixtures and conduits and all renewals or replacements thereof or articles in substitution therefor, in all cases whether or not the same are or shall be attached to said building or buildings in any manner, it being mutually agreed that all of the Premises shall, so far as permitted by law, be deemed to be

fixtures, a part of the realty and security for the Indebtedness Hereby Secured. Notwithstanding the agreement and declaration hereinabove expressed that certain articles of property form a part of the realty covered by this Mortgage and be appropriated to its use and deemed to be realty, to the extent that such agreement and declaration may be effective and that any of said articles may constitute goods (as said term is used in the Uniform Commercial Code) this instrument shall constitute a security agreement creating a security interest in such goods, as collateral, in Mortgagee as a secured party, all in accordance with said Uniform Commercial Code as more particularly set forth in Paragraph 17 hereof;

TOGETHER with all rights, title, estate and interest of the First Party in and to the Premises, estate, property, improvements, furniture, furnishings, apparatus and fixtures hereby conveyed, assigned, pledged and hypothecated, or intended so to be, and all right to retain possession of the Premises after event of default in payment, or breach of any covenant herein contained; and

TOGETHER with all awards and other compensation heretofore or hereafter to be made to the present and all subsequent owners of the Premises for any taking by eminent domain, either permanent or temporary, of all or any part of the Premises or any easement or appurtenance thereof, including severance and consequential damage and change in grade of streets, which said awards and compensation are hereby assigned to Mortgagee pursuant to the provisions thereof, and First Party, in the event of the occurrence and continuation of an Event of Default hereunder, hereby appoints Mortgagee its attorney-in-fact, coupled with an interest, and authorizes, directs and empowers such attorney, at the option of the attorney, on behalf of First Party, or the successors or assigns of First Party to adjust or compromise the claim for any award and to collect and receive the proceeds thereof, to give proper receipts and acquittances therefore, and, after deducting expenses of collection, to apply the net proceeds as a credit upon any portion, as selected by Mortgagee, of the Indebtedness Hereby Secured, all subject to the provisions of Paragraph 10 hereof.

TO HAVE AND TO HOLD the Premises, with the appurtenances, and fixtures, unto the Mortgagee, its successors and assigns, forever, for the purposes and upon the uses and purposes herein set forth together with all right to possession of the Premises upon the occurrence of any Event of Default as hereinafter defined, the First Party hereby Releasing and Waiving all rights under and by virtue of the homestead exemption laws of the State of Illinois.

PROVIDED, NEVERTHELESS, that if the First Party shall pay when due the Indebtedness Hereby Secured and shall duly and timely perform and observe all of the terms, provisions, covenants and agreements herein provided to be performed and observed by the First Party, then this Mortgage and the estate, right and interest of the Mortgagee in the Premises shall cease and become void and of no effect, otherwise to remain in full force and effect.

## THE FIRST PARTY COVENANTS AND AGREES AS FOLLOWS:

1. Payment of Indebtedness: The First Party shall pay when due (a) the principal of and interest and premium, if any, on the indebtedness evidenced by the Note and (b) all other Indebtedness Hereby Secured, and the First Party shall duly and punctually perform and observe all of the terms, provisions, conditions, covenants and agreements on the First Party's part to be performed or observed as provided herein and in the Note, and this Mortgage shall secure such payment, performance and observance.

2. Maintenance, Repair, Restoration, Liens, Etc.: The First Party shall (a) promptly repair, restore or rebuild any building or improvement now or hereafter on the Premises which may become damaged or be destroyed whether or not proceeds of insurance are available or sufficient for the purposes; (b) keep the Premises in good condition and repair, without waste and free from mechanic's, materialmen's or like liens or claims or other liens or claims for lien; (c) pay, when due, any Indebtedness which may be secured by a lien or charge of the Premises superior to the lien hereof and, upon request, exhibit to the Mortgagee satisfactory evidence of the discharge of such prior lien; (d) complete the construction of any improvements within a reasonable time, now or at any time in the process of repair or erection upon the Premises; (e) comply with all requirements of law, municipal ordinances or restrictions and covenants of record with respect to the Premises and the use thereof; (f) make or permit no material alterations in the Premise except as required by law or ordinance without the prior written consent of the Mortgagee in accordance with the terms of the Commitment Letter dated June 11, 1998; (g) suffer or permit no change in the general nature of the occupancy of the Premises; (h) initiate or acquiesce in no zoning reclassification with respect to the Premises, other than the Class 9 tax reduction previously disclosed to Mortgagee; and (i) suffer or permit no unlawful use of, or nuisance to exist upon the Premises.

3. Other Liens: The First Party shall not create or suffer or permit any mortgage, lien, charge or encumbrance to attach to the Premises, whether such lien, charge or encumbrance is inferior or superior to the lien of this Mortgage, excepting only the lien of real estate taxes and assessments not due or delinquent.

4. Taxes: The First Party shall pay before any penalty attaches, all general and special taxes, assessments, water charges, sewer charges, and other fees, taxes, charges and assessments of every kind and nature whatsoever (all herein generally referred to as "Taxes"), whether or not assessed against the First Party, if applicable to the Premises or any obligation or agreement secured hereby, and First Party shall, upon written request furnish to the Mortgagee duplicate receipts therefor. The First Party shall pay in full under protest in the manner provided by statute, any Taxes which the First Party may desire to contest; provided, however, that if deferment of payment of any such Taxes is required to conduct any contest or review, the First Party shall deposit with the Mortgagee the full amount thereof, together with an amount equal to the estimated interest and penalties thereon during the period of contest, and in any event, shall pay such Taxes notwithstanding such contest, if in the opinion of the Mortgagee the Premises shall be in jeopardy or in danger of being forfeited or foreclosed, and if the First Party shall not pay the same when

required to do so, the Mortgagee may do so and may apply such deposit for the purpose. In the event that any law or court decree has the effect of deducting from the value of the land for the purpose of taxation any lien thereon, or imposing upon the Mortgagee the payment of the whole or any part of the Taxes or liens herein required to be paid by the First Party, or changing in any way the laws relating to the taxation of mortgagee in the Premises, or the manner of collection of Taxes, so as to adversely affect this Mortgage or Indebtedness Hereby Secured or the Mortgagee, then, and in any such event and in the further event that such taxes are not paid, the First Party, upon demand by the Mortgagee, shall pay such Taxes, or reimburse the Mortgagee therefor on demand, unless such payment or reimbursement by First Party is unlawful in which event the Indebtedness Hereby Secured shall be due and payable within ten (10) days after written demand by Mortgagee to First Party. Nothing in this Paragraph 4 contained shall require the First Party to pay any income, franchise or excise tax imposed upon the Mortgagee, excepting only such which may be levied against such income expressly as and for a specific substitute for Taxes on the Premises, and then only in an amount computed as if the Mortgagee derived no income from any source other than its interest hereunder.

5. Insurance Coverage: The First Party will insure or cause to be insured and keep or cause to be kept insured all of the buildings and improvements now or hereafter constructed or erected upon the Premises and each and every part and parcel thereof, against such periods and hazards as the Mortgagee may from time to time require, and in any event including:

- (a) Insurance against loss by fire, risks covered by the so-called extended coverage endorsement, and other risks as the Mortgagee may reasonably require, in the amount of not less than \$1,211,000.00; and
- (b) Public liability insurance against bodily injury and property damage with such limits as the Mortgagee may require; and
- (c) Hazard insurance; and
- (d) Comprehensive general liability and property damage insurance for not less than \$1,000,000.00; and
- (e) Builder's risk insurance with liability limit of not less than \$1,000,000.00; and
- (f) Workmen's compensation and liability insurance (including contractual liability with liability limits for death or injury to persons of not less than \$1,000,000.00 and damage to property of not less than \$500,000.00).

6. Insurance Policies: All policies of insurance to be maintained and provided as required by Paragraph 5 hereof shall be in form, companies and amounts reasonably satisfactory to the Mortgagee and all policies of casualty insurance shall have attached thereto mortgagee clauses or endorsements in favor of and with loss payable to and in form

satisfactory to the Mortgagee. The First Party will deliver all policies (or certificates evidencing said policies), including additional and renewal policies to the Mortgagee unless such policies are delivered to the holder of the Note described in Paragraph 3 hereof and, in case of insurance policies about to expire, the First Party will deliver renewal policies not less than ten (10) days prior to the respective dates of expiration.

7. Deposits for Taxes: The Mortgagee shall not require an escrow for payment of general taxes and special assessments against said premises.

8. Proceeds of Insurance: The First Party will give the Mortgagee prompt notice of any damage to or destruction of the Premises, subject to and in accordance with the provisions of the Agreement, and:

- (a) In case of loss covered by policies of insurance, the Mortgagee (or, after entry of decree of foreclosure, the purchaser at the foreclosure sale or decree creditor, as the case may be) is hereby authorized at its option either (i) to settle and adjust to any claim under such policies without the consent of the First Party, or allow the First Party to agree with the insurance company or companies on the amount to be paid upon the loss, and provided that in any case the Mortgagee shall, and is hereby authorized to, collect and receipt for any such insurance proceeds, and the expenses incurred by the Mortgagee in the adjustment and collection of insurance proceeds shall be so much additional Indebtedness Hereby Secured, and shall be reimbursed to the Mortgagee upon demand. Notwithstanding the foregoing, First Party and its Beneficiary shall have the right to settle and adjust any claims as long as such settlement and adjustment is diligently pursued and as long as such settlement and adjustment is subject to the final approval of Mortgagee, which approval shall not be unreasonably withheld or delayed.
- (b) In the event of any insured damage to or destruction of the Premises or any part thereof (hereinafter referred to as "Insured Casualty"), and if, in the reasonable judgment of the Mortgagee, the Premises can be restored to an economic unit not less valuable than the same was prior to the Insured Casualty and adequately securing the outstanding balance of the Indebtedness Hereby Secured, then, if no Event of Default, as hereinafter defined, shall have occurred and be then continuing, the proceeds of insurance shall be applied to reimburse the First Party for the cost of restoring, repairing, replacing or rebuilding the Premises or part thereof, as provided for in Paragraph 9 hereof; and the First Party hereby covenants and agrees forthwith to commence and diligently to proceed with such restoring, repairing, replacing or rebuilding; provided, always, that the First Party shall pay all costs of such restoring, repairing, replacing or rebuilding in excess of the net proceeds of insurance made available pursuant to the terms hereof. In the event of complete destruction of the Premises which results in an insurance settlement in excess of the then existing Indebtedness Hereby Secured, then, and in that event, the First Party shall have the option of

paying off the entire Indebtedness Hereby Secured in accordance with the terms and conditions contained herein, unless the parties agree in writing otherwise.

- (c) Except as provided in Subsection (b) of this Paragraph 8, the Mortgagee may apply the proceeds of insurance consequent upon any Insured Casualty upon the Indebtedness Hereby Secured, in such order or manner as the Mortgagee may elect.
- (d) In the event that proceeds of insurance, if any, shall be made available to the First Party for the restoring, repairing, replacing or rebuilding of the Premises, the First Party hereby covenants to restore, repair, replace or rebuild the same, to be of at least equal value, and of substantially the same character as prior to such damage or destruction, all to be effected in accordance with plans and specifications to be first submitted to and approved by the Mortgagee, provided all conditions precedent have been complied with and there is not an Event of Default, then such proceeds shall be made available to First Party.

9. Disbursement of Insurance Proceeds: In the event the First Party is entitled to reimbursement out of insurance proceeds held by the Mortgagee, such proceeds shall be disbursed from time to time upon the Mortgagee being furnished with satisfactory evidence of the estimated cost of completion of the restoration, repair, replacement and rebuilding with funds (or assurances satisfactory to the Mortgagee that such funds are available) sufficient in addition to the proceeds of insurance to complete the proposed restoration, repair, replacement and rebuilding and with such architect's certificates, waivers of lien, contractor's sworn statements, title insurance endorsements, plats of survey and other such evidences of cost, payment and performance as the Mortgagee may reasonably require and approve, and the Mortgagee may, in any event, require that all plans and specifications for such restoration, repair, replacement and rebuilding be submitted to and approved by the Mortgagee prior to commencement of work. No payment made prior to the final completion of the restoration, repair, replacement and rebuilding shall exceed ninety percent (90%) of the value of the work performed from time to time. Funds other than proceeds of insurance shall be disbursed prior to disbursement of such proceeds and at all times the undisbursed balance of such proceeds remaining in the hands of the Mortgagee, together with funds deposited for that purpose are irrevocably committed to the satisfaction of the Mortgagee by or on behalf of the First Party for that purpose, shall be at least sufficient, in the reasonable judgment of the Mortgagee, to pay for the costs of completion of the restoration, repair, replacement or rebuilding, free and clear of all liens or claims for lien. Any surplus which may remain out of insurance proceeds held by the Mortgagee after payment of such costs of restoration, repair, replacement or rebuilding or costs or fees incurred in obtaining such proceeds shall, at the option of the Mortgagee, be applied on account of the Indebtedness Hereby Secured. No interest shall be allowed to the First Party on account of any proceeds of insurance or other funds held in the hands of the Mortgagee. In the event of complete destruction of the Premises which results in an insurance settlement in excess of the then existing Indebtedness Hereby Secured, then, and in that

event, the First Party shall have the option of paying off the entire Indebtedness Hereby Secured in accordance with the terms and conditions contained herein, unless the parties agree in writing otherwise.

10. Condemnation: The First Party hereby assigns, transfers and sets over unto the Mortgagee the entire proceeds of any award or claim for damages for any of the Premises taken or damaged under the power of eminent domain or by condemnation including any payments made in lieu of and/or in settlement of a claim or threat of condemnation. The Mortgagee may elect to apply the proceeds of the award upon or in reduction of the Indebtedness Hereby Secured then most remotely to be paid, whether due or not, or require the First Party to restore or rebuild the Premises, in which event, the proceeds shall be held by the Mortgagee and used to reimburse the First Party for the cost of such rebuilding or restoring. If, in the reasonable judgment of the Mortgagee, the Premises can be restored to an economic unit not less valuable than the same was prior to the condemnation and adequately securing the outstanding balance of the Indebtedness Hereby Secured, the award shall be used to reimburse the First Party for the cost of restoration and rebuilding; provided always, that no Event of Default has occurred and is then continuing. If the First Party is required or permitted to rebuild or restore the Premises as aforesaid, such rebuilding or restoration shall be effected solely in accordance with plans and specifications previously submitted to and approved by the Mortgagee, and proceeds of the award shall be paid out in the same manner as is provided in Paragraph 9 hereof for the payment of insurance proceeds towards the cost of rebuilding or restoration. If the amount of such award is insufficient to cover the cost of rebuilding or restoration, the First Party shall pay such costs in excess of the award, before being entitled to reimbursement out of the award. Any surplus which may remain out of the award after payment of such costs of rebuilding or restoration or costs or fees incurred in obtaining such award shall, at the option of the Mortgagee, be applied on account of the Indebtedness Hereby Secured. No interest shall be allowed to First Party on account of any award held by Mortgagee.

11. Tax Stamp: If, by laws of the United States of America, or of any state or municipality having jurisdiction over the First Party of the Premises, any tax becomes due in respect of the issuance of the Note or this Mortgage, the First Party shall pay such tax in the manner required by law.

12. Prepayment Privilege: The First Party shall have the privilege of making payments on the principal balance of the Note in accordance with the terms of the Note, which are specifically incorporated by reference herein.

13. Effect of Extension of Time and Amendments of Junior Liens and Other: If the payment of the Indebtedness Hereby Secured, or any part thereof, be extended or varied, or if any part of the security therefor be released, all persons now or at any time hereafter liable therefor, or interested in the Premises, shall be held to assent to such extension, variation or release, and their liability, and the lien and all provisions hereof, shall continue in full force and effect; the right of recourse against all such persons being expressly reserved by the Mortgagee, notwithstanding any such extension, variation or release. Any person, firm or corporation taking a junior mortgage or other lien, upon the



Premises or any interest therein, shall take the said lien subject to the rights of the Mortgagee to amend, modify and supplement this Mortgage, the Note and the Assignments herein referred to, and to extend the maturity of the Indebtedness Hereby Secured, in each and every case without obtaining the consent of the holder of such junior lien and without the lien of this Mortgage losing its priority over the rights of any such junior liens.

14. Mortgagee's Performance of First Party's Obligations: In case of an Event of Default herein, the Mortgagee, either before or after acceleration of the Indebtedness Hereby Secured or the foreclosure of the lien hereof and during the period of redemption, if any, may but shall not be required to, make any payment or perform any act herein required of the First Party (whether or not the First Party is personally liable therefor) in any form and manner deemed in good faith expedient to the Mortgagee, and the Mortgagee may, but shall not be required to, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting the Premises or contest any tax or assessment, and may, but shall not be required to, complete construction, furnishing and equipping of the improvements upon the Premises and rent, operate and manage the Premises and such improvements and pay operating costs and expenses, including management fees of every kind and nature in connection therewith, so that the Premises and improvements shall be operational and usable for their intended purposes. All monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including reasonable attorney's fees and other monies advanced by the Mortgagee to protect the Premises and the lien hereof, or to complete construction, furnishing and equipping or to rent, operate and manage the Premises and such improvements or to pay any such operating costs and expenses thereof or to keep the Premises and improvements operational and usable for its intended purpose, shall be so much additional Indebtedness Hereby Secured, whether or not they exceed the face amount of the Note, and shall become immediately due and payable without notice and with interest thereon at the Default Rate specified in the Note (hereinafter referred to as the "Default Rate"). Inaction of the Mortgagee shall never be considered as a waiver of any right accruing to it on account of any default on the part of the First Party. The Mortgagee in making any payment hereby authorized (a) relating to taxes and assessments, may do so according to the bill, statement or estimate, without inquiry into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof; (b) for the purchase, discharge, compromise or settlement of any other prior lien, may do so without inquiry as to the validity or amount of any claim for lien which may be asserted; and (c) in connection with the completion of construction, furnishing or equipping of the improvements of the Premises or the rental, operation of management of the Premises or the payment of operating costs and expenses thereof, Mortgagee may do so in such amounts and to such persons as Mortgagee may deem appropriate and may enter into such contracts therefor as Mortgagee may deem appropriate or may perform the same itself.

15. Inspection of Premises and Records: The Mortgagee shall have the right to inspect the Premises and all books, records and documents relating thereto at all reasonable times, and access thereto shall be permitted for that purpose.

16. Financial Statements: First Party and Maker covenant and agree while any Indebtedness Hereby Secured is outstanding, to furnish to the holder of the Note within thirty (30) days at the end of each fiscal year of its operation, all financial information requested by the Mortgagee, including, but not limited to, current personal financial statements and federal tax returns of ERIC KERLOW, MATTHEW WILBUR and WILLIAM PLATT, as well as financial statements and tax returns for BEAR FLAG, INC., an Illinois corporation, said financial statements being prepared and reviewed by an independent certified public accountant. The financial information required under the provisions of this paragraph shall also include the financial data relevant to the operation and ownership of the real estate and, in the event the improvements thereof are operated by a lessee, statements required shall include an audit of the operations of the lessee, which shall also be provided within ninety (90) days of the end of the fiscal year of the lessee. Each of such financial statements shall be comprehensive and reflect, in addition to other data, the following: gross income and source, real estate taxes, insurance, operating expenses in reasonable detail, depreciation deduction for federal income tax purposes, federal income taxes and net income. Within thirty (30) days of filing, First Party shall furnish to the holder of the Note copies of filed federal and state income tax returns. That in the event Maker fails to provide the Mortgagee with any and all financial information requested within thirty (30) days of written request, Mortgagee shall have the option to increase the interest rate on the Note by FIVE PERCENT (5%) over the Loan Rate (the "Default Rate") until the default is cured or the Mortgagee may demand payment in full of the total indebtedness.

17. Uniform Commercial Code: This Mortgage constitutes a Security Agreement under the Uniform Commercial Code of the State of Illinois (hereinafter referred to as the "Code") with respect to any part of the Premises which may or might now or hereafter be or be deemed to be personal property, fixtures or property other than real estate owned by the First Party or any beneficiary thereof (all for the purposes of this Paragraph 17 called "Collateral"); all of the terms, provisions, conditions and agreements contained in this Mortgage pertain and apply to the Collateral as fully and to the same extent as to any other property comprising the Premises, and the following provisions of this paragraph 17 shall not limit the generality or applicability of any other provisions of this Mortgage but shall be in addition thereto:

- (a) The First Party (being the Debtor as that term is used in the Code) is and will be the true and lawful owner of the Collateral, subject to no liens, charges or encumbrances other than the lien hereof.
- (b) The Collateral is to be used by the First Party solely for business purposes, being installed upon the Premises for First Party's own use or as the equipment and furnishings furnished by First Party, as landlord, to tenants of the Premises.
- (c) The Collateral will be kept at the real estate comprised within the Premises and will not be removed therefrom other than in the ordinary course of business without the consent of the Mortgagee (being the Secured Party as

that term is used in the Code) or any other person and the Collateral may be affixed to such real estate but will not be affixed to any other real estate.

- (d) The only persons having any interest in the collateral are the First Party and its beneficiaries, the Mortgagee, permitted tenants and users thereof.
- (e) No Financing Statement covering any of the Collateral or any proceeds thereof is on file in any public office except pursuant hereto; and First Party will at its own cost and expense, upon demand, furnish to the Mortgagee such further information and will execute and deliver to the Mortgagee such financing statements and other documents in form satisfactory to the Mortgagee and will do all such acts and things as the Mortgagee may at any time or from time to time reasonably request or as may be necessary or appropriate to establish and maintain a perfected security interest in the Collateral as security for the Indebtedness Hereby Secured, subject to no adverse liens or encumbrances and the First Party will pay the cost of filing the same or filing or recording such financing statements or other documents, and this instrument, in all public offices wherever filing or recording is deemed by the Mortgagee to be necessary or desirable.
- (f) Upon the Event of Default hereunder (regardless of whether the Code has been enacted in the jurisdiction where rights or remedies are asserted) and at any time thereafter (such default not having previously been cured), the Mortgagee at its option may declare the Indebtedness Hereby Secured immediately due and payable, all as more fully set forth in Paragraph 17 hereof, and thereupon Mortgagee shall have the remedies of a secured party under the Code, including without limitation, the right to take immediate and exclusive possession of the Collateral, or any part thereof, and for that purpose may, so far as the First Party can give authority therefor, with or without judicial process, enter (if this can be done without breach of the peace), upon any place where the Collateral or any part thereof may be situated and remove the same therefrom (provided that if the Collateral is affixed to real estate, such removal shall be subject to the conditions stated in the Code); and the Mortgagee shall be entitled to hold, maintain, preserve and prepare the Collateral for sale, until disposed of, or may propose to retain the Collateral subject to First Party's right of redemption in satisfaction of the First Party's obligations, as provided in the Code. The Mortgagee without removal may render the Collateral unusable and dispose of the Collateral on the Premises. The Mortgagee may require the First Party to assemble the Collateral and make it available to the Mortgagee for its possession at a place to be designated by Mortgagee which is reasonably convenient to both parties. The Mortgagee will give First Party at least fifteen (15) business days notice of the time and place of any public sale thereof or of the time after which any private sale or any other intended disposition thereof is made. The requirements of reasonable notice shall be met if such notice is mailed, by certified mail or equivalent, postage prepaid,

to the address of First Party shown in Paragraph 39 of this Mortgage at least fifteen (15) business days before the time of the sale or disposition. The Mortgagee may buy at any public sale and if the Collateral is of a type customarily sold in a recognized market or is of the type which is the subject of widely distributed standard price quotations, Mortgagee may buy at private sale. Any such sale may be held as part of and in conjunction with any foreclosure sale of the real estate comprised within the Premises, the Collateral and real estate to be sold as one lot if Mortgagee so elects. The net proceeds realized upon any such disposition, after deduction for the expenses of retaking, holding, preparing for sale, selling or the like and the reasonable attorney's fees and legal expenses incurred by Mortgagee, shall be applied in satisfaction of the Indebtedness Hereby Secured. The Mortgagee will account to the First Party for any surplus realized on such disposition.

- (g) The remedies of the Mortgagee hereunder are cumulative and the exercise of any one or more of the remedies provided for herein or under the Code shall not be construed as a waiver of the other remedies of the Mortgagee, including having the Collateral deemed part of the realty upon any foreclosure thereof so long as any part of the Indebtedness Hereby Secured remains unsatisfied.
- (h) The terms and provisions contained in this Paragraph 17 shall, unless the context otherwise requires, have the meanings and be construed as provided in the Code.
- (i) This Mortgage is intended to be a financing statement within the purview of Section 9-402(6) of the Code with respect to the Collateral and the goods described at the beginning of this Mortgage which goods are or are to become fixtures relating to the Premises. The addresses of the First Party (Debtor) and Mortgagee (Secured Party) are set forth in Paragraph 39 hereof. This Mortgage is to be filed for recording with the Recorder of Deeds of the County or Counties where the Premises are located. The First Party is the record owner of the Premises.

18. Restrictions on Transfer: It shall be an Event of Default hereunder if, without the prior written consent of the Mortgagee, any one or more of the following shall occur:

- (a) If the First Party and/or Maker shall create, effect or consent to or shall suffer or permit any conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest, granting an option to purchase, entering into an installment sales contract or other encumbrance or alienation of the premises or any part thereof or interest therein, excepting only sales or other dispositions of Collateral (hereinafter called "Obsolete Collateral") no longer useful in connection with the operation of the Premises, provided that prior

to the sale or other disposition thereof, such Obsolete Collateral has been replaced by Collateral, subject to the first and prior lien hereof, of at least equal value and utility;

- (b) If the First Party is a Land Trustee, then, if any beneficiary of the First Party shall create, effect or consent to, or shall suffer or permit any sale, assignment, transfer, lien, pledge, mortgage, security interest, granting an option to purchase, entering into an installment sales contract or other encumbrance or alienation of all or any portion of such beneficiary's beneficial interest in the First Party;
- (c) If the First Party is a partnership, limited liability company, or joint venture, or if any beneficiary of a trustee mortgagor is a partnership, limited liability company, or joint venture, then if any General Partner, member, or joint venturer in such partnership, limited liability company, or joint venture shall create, effect or consent to or shall suffer or permit any sale, assignment, transfer, lien, pledge, mortgage, security interest, granting an option to purchase, entering into an installment sales contract or other encumbrance or alienation of all or any part of the partnership interest, limited liability company interest, or joint venture interest, as the case may be, of such partner, member, or joint venture;
- (d) If the First party is a corporation, or if any beneficiary of a trustee mortgagor is a corporation, then the merger, liquidation or dissolution of such corporation or the sale of all or substantially all of its assets not in the ordinary course of business or share exchange or the sale, assignment, transfer, lien, pledge, security interest, granting an option to purchase, entering into an installment sales contract or other encumbrance or alienation of the outstanding securities of such corporation;

in each case whether any such conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest, granting an option to purchase, entering into an installment sales contract encumbrance or alienation is effected directly, indirectly, voluntarily or involuntarily, by operation of law or otherwise; provided, that the foregoing provisions of this Paragraph 18 shall not apply (i) to liens securing the Indebtedness Hereby Secured; (ii) to the lien of current taxes and assessments not in default, (iii) to any transfer of the Premises, or part thereof, or interest therein, or any beneficial interests, or shares of stock or partnership, limited liability company, or joint venture interests, as the case may be, in the First Party or any beneficiary of a trustee mortgagor by or on behalf of an owner thereof who is deceased or declared judicially incompetent, to such owner's heirs, legatees, devisees, executors, administrators, estate, personal representatives and/or committee, and (iv) to any sale of a portion of the Premises for which a release of the lien hereof is to be given pursuant to the provisions of the Agreement. The provisions of this Paragraph 18 shall be operative with respect to, and shall be binding upon, any persons who, in accordance with the terms hereof or otherwise shall acquire any part of or interest in or encumbrances upon the Premises, or such beneficial interest in, shares of stock of, or

partnership, limited liability company, or joint venture in, the First Party or any beneficiary of a trustee mortgagor.

19. Events of Default: If one or more of the following events (hereinafter referred to as "Events of Default") shall occur:

- (a) If a default is made in the due and punctual payment of the Note, or any installment thereof, either principal or interest, as and when the same is due and payable and same is not cured within ten (10) days thereafter; or
- (b) If a default is made and shall continue for ten (10) days after notice thereof by the Mortgagee to First Party in the making of any payment of monies required to be made hereunder or under any further advances that constitutes part of the Indebtedness Hereby Secured; or
- (c) If an Event of Default under the Assignments defined in Paragraph 27 shall occur and be continuing, after expiration of any applicable grace and/or cure periods set forth therein; or
- (d) If an Event of Default pursuant to Paragraph 18 hereof shall occur and be continuing without notice or period of grace of any kind; or
- (e) If (and for the purpose of this Paragraph 19(e) only), the terms First Party shall mean and include not only First Party but any beneficiary of a trustee mortgagor, and each person who, as guarantor, co-maker or otherwise, shall be or become liable for or obligated upon all or any part of the Indebtedness Hereby Secured or any of the covenants or agreements contained herein):
  - (i) First Party shall file a petition in voluntary bankruptcy under any chapter of the Federal Bankruptcy Act or any similar law, state or federal, now or hereafter in effect; or
  - (ii) First Party shall file an answer admitting insolvency or inability to pay its debts; or
  - (iii) Within sixty (60) days after the filing against First Party of any involuntary proceedings under the Federal Bankruptcy Act or similar law, such proceedings shall not have been vacated or stayed; or
  - (iv) First Party shall be adjudicated a bankrupt, or a trustee or receiver shall be appointed for the First Party for all or the major parts of the First Party's property or the Premises, in any voluntary proceeding, or any court shall have taken jurisdiction of all or the major part of the First Party's property or the Premises in any involuntary proceeding for the reorganization, dissolution, liquidation or winding up of the First Party, and such trustee or receiver shall not be discharged or

such jurisdiction relinquished or vacated or stayed on appeal or otherwise stayed within thirty (30) days; or

- (v) First Party 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 liquidator of all or the major part of its property, or the Premises; or
  - (vi) First Party's property shall be levied upon by execution or other legal process, unless cured within thirty (30) days thereafter; or
  - (vii) First Party shall merge, liquidate or dissolve or sell all or substantially all its assets not in the ordinary course of its business.
- (f) If default shall continue for twenty (20) days after notice thereof by the Mortgagee to the First Party in the due and punctual performance or observance of any other agreement or condition herein contained or any other obligation outstanding against the premises;
  - (g) If the Premises shall be abandoned;
  - (h) If Mortgagee accelerates the indebtedness evidenced by the Note pursuant to the provisions thereof;
  - (i) In the event of the death of a Maker;
  - (j) Failure to maintain account relationship as required herein;
  - (k) Failure to provide such information as the Mortgagee shall reasonably request in writing with regard to the First Party and/or the Premises,

then, so long as such Event of Default still exists, the Mortgagee is hereby authorized and empowered, at its option, and without affecting the lien hereby created or the priority of said lien or any right of the Mortgagee hereunder to declare, without further notice all Indebtedness Hereby Secured to be immediately due and payable, whether or not such a default be thereafter remedied by the First Party, and the Mortgagee may immediately proceed to foreclose this Mortgage and/or to exercise any right, power or remedy provided by this Mortgage, the Note, the Assignment or by law or in equity conferred.

20. Possession by Mortgagee: When the Indebtedness Hereby Secured shall become due, whether by acceleration or otherwise, the Mortgagee shall, if applicable law permits, have the right to enter into and upon the Premises and take possession thereof or to appoint an agent or trustee for the collection of rents, issues and profits of the Premises; and the net income, after allowing a reasonable fee for the collection thereof and for the

management of the Premises, may be applied to the payment of taxes, insurance premiums and other charges applicable to the Premises, or in reduction of the Indebtedness Hereby Secured; and the rents, issues and profits of and from the Premises are hereby specifically pledged to the payment of the Indebtedness Hereby Secured.

21. Foreclosure: When the Indebtedness Hereby Secured, or any part thereof, shall become due, whether by acceleration or otherwise, the Mortgagee shall have the right to foreclose the lien hereof for such Indebtedness or part thereof. In any suit to foreclose the lien hereof, there shall be allowed and included as additional Indebtedness in the decree of sale, all expenditures and expenses which may be paid or incurred by or on behalf of the Mortgagee for reasonable attorney's fees, appraiser's fees, outlays for documentary and expert evidence, stenographer's 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 assurance with respect to title, as the Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at sales which may be had pursuant to such decree, the true conditions of the title to or the value of the Premises. All expenditures and expenses of the nature mentioned in this Paragraph, and such other expenses and fees as may be incurred in the protection of the Premises and the maintenance of the lien of this Mortgage, including the fees of any attorney employed by the Mortgagee in any litigation or proceeding affecting this Mortgage, the Note or the Premises, including probate and bankruptcy proceedings, or in preparation of the commencement or defense of any proceedings or threatened suit or proceeding, shall be so much additional Indebtedness Hereby Secured and shall be immediately due and payable by the First Party, with interest thereon at the Default Rate per annum until paid.

22. Receiver/Mortgagee in Possession: Upon, or at any time after the filing of a complaint to foreclose this Mortgage, the Court in which such complaint is filed may appoint a receiver of the Premises or Mortgagee as mortgagee in possession. Such appointment may be made either before or after sale, without regard to solvency or insolvency of the First Party at the time of application for such receiver, and without regard to the then value of the Premises or whether the same shall be then occupied as a homestead or not, and the Mortgagee hereunder or any holder of the Note or any employee or agent thereof may be appointed as such receiver or mortgagee in possession. Such receiver or mortgagee in possession shall have the power to collect the rents, issues and profits of the Premises during the pendency of such foreclosure suit and, in case of a sale and deficiency, during the full statutory period of redemption, if any, whether there be a redemption or not, as well as during any further times when the First Party, except for the intervention of such receiver or mortgagee in possession, would be entitled to collection of such rents, issues and profits and all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during the whole of said period. The court may, from time to time, authorize the receiver or mortgagee in possession to apply the net income from the Premises in his hands in payment in whole or in part of:

- (a) The Indebtedness Hereby Secured or the indebtedness secured by a 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 the foreclosure sale; or

- (b) The deficiency in case of a sale and deficiency.

23. 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, on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in Paragraph 21 hereof; Second, all other items which, under the terms hereof, constitute Indebtedness Hereby Secured additional to that evidenced by the Note, with interest on such items as herein provided; Third, to interest remaining unpaid upon the Note or under any further advances as are herein mentioned; Fourth, to the principal remaining unpaid upon the Note; and upon any further advances as are herein mentioned; and lastly, any surplus to the First Party, and its successors or assigns, as their rights may appear.

24. Insurance Upon Foreclosure: In case of an insured loss after foreclosure proceedings have been instituted, the proceeds of any insurance policy or policies, if not applied in rebuilding or restoring the buildings or improvements, as aforesaid, shall be used to pay the amount due in accordance with any decree of foreclosure that may be entered in any such proceedings, and the balance, if any, shall be paid as the court may direct. In the case of foreclosure of this Mortgage, the court, in its decree, may provide that the Mortgagee's clause attached to each of the casualty insurance policies may be canceled and that the decree creditor may cause a new loss clause to be attached to each of said casualty insurance policies making the loss thereunder payable to such decree creditors; and any such foreclosure decree may further provide that in case of one or more redemptions under said decree, pursuant to the statutes in such case made and provided, then in every such case, each successive redeemer may cause the preceding loss clause attached to each casualty insurance policy to be canceled and a new loss clause to be attached thereto, making the loss thereunder payable to such redeemer. In the event of a foreclosure sale, the Mortgagee is hereby authorized, without consent of the First Party, to assign any and all insurance policies to the purchaser at the sale, or to take such steps as the Mortgagee may deem advisable to cause the interest of such purchaser to be protected by any of the said insurance policies without credit or allowance to First Party for prepaid premiums thereon.

25. Waiver: The First Party hereby covenants and agrees that it will not at any time insist upon or plead, or in any manner whatsoever claim or take any advantage of, any stay, exemption or extension law or any so-called "Moratorium Law" now or at any time hereafter in force, nor claim, take or insist upon any benefit or advantage of or from any law now or hereafter in force providing for the valuation or appraisal of the Premises, or any part thereof, prior to any sale or sales thereof to be made pursuant to any provisions herein contained, or to any decree, judgment or order of any court of competent jurisdiction, or after such sale or sales claim or exercise any rights under any statute now or hereafter in force to redeem the property so sold, or any part thereof, or relating to the marshalling thereof, upon foreclosure sale or other enforcement hereof. The First Party

hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage, on its own behalf and on behalf of each and every person acquiring any interest in or title to the Premises subsequent to the date hereof, it being the intent hereof that any and all such rights of redemption of the First Party and of all other persons, are and shall be deemed to be hereby waived to the full extent permitted by the provisions of Illinois Revised Statutes, 735 ILCS 5/15-1601, and any statute enacted in replacement or substitution thereof. The First Party will not invoke or utilize any such law or laws or otherwise hinder, delay or impede the exercise of any right, power or remedy herein or otherwise granted or delegated to the Mortgagee, but will suffer and permit the exercise of every such right, power and remedy as though no such law or laws have been made or enacted. First Party hereby further expressly waives any and all rights of reinstatement, on its own behalf and on behalf of each and every person acquiring any interest in or title to the Premises subsequent to the date hereof, it being the intent hereby that any and all such rights of reinstatement of the first party and of all other persons are and shall be deemed to be hereby waived to the full extent provided by law, whether such rights of reinstatement are granted by the provisions of Illinois Revised Statutes, 735 ILCS 5/15-1602, and any statute enacted in replacement or substitution thereof, or otherwise.

26. Hazardous Materials:

- (a) Definitions: For the purpose of this Mortgage, First Party and Mortgagee agree that, unless the context otherwise specifies or requires, the following terms shall have the meaning herein specified:
- (i) "Hazardous Materials" shall mean (a) any "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901, et. seq.), as amended from time to time, and regulations promulgated thereunder; (b) any "hazardous substance" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9601, et. seq.) ("CERCLA"), as amended from time to time, and regulations promulgated thereunder; (c) asbestos; (d) polychlorinated biphenyls; (e) any substance and presence of which on the Premises is prohibited by any Governmental Requirements; and (f) any other substance which by any Governmental Requirement requires special handling in its collection, storage, treatment or disposal.
  - (ii) "Hazardous Materials Contamination" shall mean the contamination (whether presently existing or hereafter occurring) of the improvements, facilities, soil, ground water, air or other elements on, or of, the Premises by Hazardous Materials, or the contamination of the buildings, facilities, soil, ground water, air or other elements on, or of, any other property as a result of Hazardous Materials at any time (whether before or after the date of this Mortgage) emanating from the Premises.

- (b) First Party's Warranties: First Party hereby represents and warrants that, to the best of their knowledge, no Hazardous Materials are now located on the Premises and that neither First Party nor any other person has, ever caused or permitted any Hazardous materials to be placed, held, located or disposed of, on, under or at the Premises or any part thereof. No part of the Premises has ever been used, to the best of First Party's knowledge prior to the First Party's becoming the Owner of the Premises, or will be used during First Party's ownership of the Premises as a manufacturing, storage or dump site for Hazardous Materials, nor is any part of the Premises affected by any Hazardous Materials Contamination, except as disclosed in writing. To the best of the First Party's knowledge and belief, no property adjoining the Premises has ever been used as a manufacturing, storage or dump site for Hazardous Materials nor is any other property adjoining the Premises affected by Hazardous Materials Contamination, except as disclosed in writing.
- (c) First Party's Covenants: First Party agrees to (a) give notice to Mortgagee immediately upon the First Party acquiring knowledge of the presence of any Hazardous Materials on the Premises or of any Hazardous Materials Contamination with a full description thereof; (b) promptly comply with any Governmental Requirement requiring the removal, treatment or disposal of such Hazardous Materials or Hazardous Materials Contamination and provide Mortgagee with satisfactory evidence of such compliance; and (c) provide Mortgagee, within thirty (30) days after demand by the Mortgagee, with a bond, letter of credit or similar financial assurance evidencing to the Mortgagee's satisfaction that the necessary funds are available to pay the cost of removing, treating or disposing of such Hazardous Materials or Hazardous Materials Contamination and discharging any assessments which may be established on the Premises as a result thereof.
- (d) Site Assessments: Mortgagee (by its officers, employees and agents) at any time and from time to time, either prior to or after the occurrence of an Event of Default, may contract for the services of persons (the "Site Reviewers") to perform environmental site assessments ("Site Assessments") on the Premises for the purpose of determining whether there exists on the Premises any environmental condition which could result in any liability, cost or expense to the owner or occupier of such Premises arising under any state, federal or local law, rule or regulation relating to Hazardous Materials. The Site Assessment may be performed at any time or times, upon reasonable notice, and under reasonable conditions established by First Party which do not impede the performance of the Site Assessment. The Site Reviewers are hereby authorized to enter upon the Premises for such purposes. The Site Reviewers are further authorized to perform both above and below ground testing for environmental damage or the presence of Hazardous Materials on the Premises and such other tests on the Premises as may be necessary to conduct the Site Assessment in the reasonable opinion

of the Site Reviewers. First Party will supply to the Site Reviewers such historical and operational information regarding the Premises as may be reasonably requested by the Site Reviewers to facilitate the Site Assessment and will make available for meetings with the Site Reviewers appropriate personnel having knowledge of such matters. On request, Mortgagee shall make the result of such Site Assessment fully available to First Party, which (prior to an Event of Default) may at its election participate under reasonable procedures in the direction of such Site Assessment and the description of tasks of the Site Reviewers. The cost of performing such Site Assessment shall be paid by First Party upon demand of Mortgagee and any such obligations shall constitute additional Indebtedness Hereby Secured by this Mortgage.

- (e) Indemnification: Regardless of whether any Site Assessments are conducted hereunder, any Event of Default shall have occurred and be continuing or any remedies in respect of the Premises are exercised by Mortgagee, First Party shall defend, indemnify and hold harmless Mortgagee from any and all liabilities (including strict liability), actions, demands, penalties, losses, costs or expenses (including, without limitation, reasonable attorney's fees and remedial costs), suits, costs of any settlement or judgment and claims of any and every kind whatsoever which may now or in the future (whether before or after the release of this Mortgage) be paid, incurred or suffered by or asserted against, Mortgagee by any person or entity or governmental agency for, with respect to, or as a direct or indirect result of, the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission, discharging or release from the Premises of any Hazardous Materials or Hazardous Materials Contamination or arise out of or result from the environmental condition of the Premises or the applicability of any Governmental Requirement relating to Hazardous Materials (including, without limitation, CERCLA or any so called federal, state or local "Superfund" or "Superlien" law, statute, law, ordinance, code, rule, order or decree), regardless of whether or not caused by or within the control of Mortgagee. The representations, covenants and warranties contained in this Section 26 shall survive the release of this Mortgage.
- (f) Mortgagee's Right to Remove Hazardous Materials: Mortgagee shall have the right but not the obligation, without in any way limiting Mortgagee's other rights and remedies under this Mortgage, to enter onto the Premises or to take such other actions as it deems necessary or advisable to clean up, remove, resolve or minimize the impact of, or otherwise deal with, any Hazardous Materials or Hazardous Materials Contamination on the Premises following receipt of any notice from any person or entity asserting the existence of any Hazardous Materials or Hazardous Materials Contamination pertaining to the Premises, or any part thereof which, if true, could result in an order, suit, and/or imposition of a lien on the Premises, or other action and/or which, in Mortgagee's sole opinion, could jeopardize Mortgagee's

security under this Mortgage. All reasonable costs and expenses paid or incurred by Mortgagee in the exercise of any such rights shall be secured by this Mortgage and shall be payable by First Party upon demand.

27. Assignments: As further security for the Indebtedness Hereby Secured, the First Party and certain other parties have concurrently herewith executed and delivered, or may hereafter execute and deliver to the Mortgagee, Assignment of Leases and Rents, Collateral Assignment of Ground Lease, and other writings (hereinafter collectively referred to as the "Assignments") on the Premises and on other property. All the terms and conditions of the Assignments are hereby incorporated herein by reference as fully and with the same effect as if set forth herein at length. The First Party agrees that it will duly perform and observe or cause to be performed and observed all obligations accepted by it under the Assignments. Nothing herein contained shall be deemed to obligate the Mortgagee to perform or discharge any obligation, duty or liability of First Party under the Assignments and the First Party shall and does hereby indemnify and hold the Mortgagee harmless from any and all liability, loss or damage which the Mortgagee may or might incur by reason of the Assignments; any and all liability, loss or damage incurred by the Mortgagee, together with the costs and expenses, including reasonable attorney's fees, incurred by the Mortgagee in the defense of any claims or demand therefor (whether successful or not), shall be so much additional Indebtedness Hereby Secured, and the First Party shall reimburse the Mortgagee therefor on demand, together with interest at the Default Rate under the Note from the date of demand to the date of payment.

28. Mortgagee in Possession: Nothing herein contained shall be construed as constituting the Mortgagee a mortgagee in possession in the absence of the actual taking of possession of the Premises.

29. Business Loan: First Party certifies and agrees that the proceeds of the Note secured hereby have been used for the purposes specified in Illinois Revised Statutes, 815 ILCS 205/4 (1)(c), and the principal obligation secured hereby constitutes a "business loan" coming within the definition and purview of said section. First party further certifies and agrees that the Premises are not residential real estate within the definition and purview of Illinois Revised Statutes, 815 ILCS 205/4 (2)(a).

30. Further Assurances: The First Party will do, execute, acknowledge and deliver all and every further acts, deeds, conveyances, transfers and assurances necessary or proper, in the sole judgment of the Mortgagee, for the better assuring, conveying, mortgaging, assigning and confirming unto the Mortgagee all property mortgaged hereby or property intended so to be, whether now owned by First Party or hereafter acquired.

31. Additional Conditions: The Maker further agrees that as conditions hereof:

- (a) A Construction Escrow must be established at one of the title companies approved by the Mortgagee. Construction advances will be disbursed through said title company upon presentation of partial and final waivers of lien;

- (b) Prior to the initial loan disbursement, an independent architect/engineer acceptable to the Mortgagee will issue to the Mortgagee a pre-construction document and cost review which must be acceptable to the Mortgagee. The Maker will be responsible for said expense;
- (c) Prior to each construction draw, Mortgagee must receive and approve a construction progress report from an independent architect/engineer acceptable to the Mortgagee. The Maker will be responsible for said expense;
- (d) At all times, the Construction Loan must be maintained "in balance." Any "out of balance" position caused by increases in the Total Project Budget will be funded by the Maker;
- (e) Mortgagee will require that 100% of the net sale proceeds but not less than 85% of the gross sales price per unit be applied to the loan balances from each closing until the loans are paid in full. Loans apply to both the acquisition and construction loan;
- (f) Maker agrees, during the term of the loan herein, to display on the subject property signage provided to the Maker by the Mortgagee stating that the Mortgagee is financing the subject property.

32. First Party's Successors: In the event that the ownership of Premises becomes vested in a person or persons other than the First Party, the Mortgagee may, without notice to the First Party, deal with such successor or successors in interest of the First Party with reference to this Mortgage and the Indebtedness Hereby Secured in the same manner as with the First Party. The First Party will give immediate written notice to the Mortgagee of any conveyance, transfer or change of ownership of the Premises, but nothing in this Paragraph 32 shall vary or negate the provisions of Paragraph 18 hereof.

33. Rights Cumulative: Each right, power and remedy herein conferred upon the Mortgagee is cumulative and in addition to every other right, power or remedy, express or implied, given now or hereafter existing, 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 to the Mortgagee 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 the Mortgagee 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 default or acquiescence therein.

34. Successors and Assigns: This Mortgage and each and every covenant, agreement and other provisions hereof shall be binding upon the First Party and its successors and assigns (including, without limitation, each and every from time to time

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record owner of the Premises or any other person having an interest therein), and shall inure to the benefit of the Mortgagee and its successors and assigns. Wherever herein the Mortgagee is referred to, such reference shall be deemed to include the holder from time to time of the Note, whether so expressed or not; and each such from time to time holder of the Note, shall have and enjoy all of the rights, privileges, powers, options and benefits afforded hereby and hereunder, and may enforce all and every of the terms and provisions herein, as fully and to the same extent and with the same effect as if such from time to time holder were herein by name specifically granted such rights, privileges, powers, options and benefits and was herein by name designated the Mortgagee.

35. Provisions Severable/Conflict: The unenforceability or invalidity of any provision or provisions hereof shall not render any other provision or provisions herein contained unenforceable or invalid.

36. Waiver of Defense: No action for the enforcement of the lien or any provision hereof shall be subject to any defense which would not be good and valid to the party interposing the same in an action at law upon the Note.

37. Time of Essence: Time is of the essence of the Note, this Mortgage, and any other document evidencing or securing the Indebtedness Hereby Secured.

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

39. Notices: Any notice which any party hereto may desire or may be required to give to any other party shall be in writing, and the mailing thereof be by certified or equivalent mail, postage prepaid, return receipt requested, to the respective addresses of the parties set forth below, or to such other place as any party hereto may by notice in writing designate for itself, shall constitute service of notice hereunder three (3) business days after the mailing thereof;

(a) If to the Mortgagee:

SUCCESS NATIONAL BANK  
ONE MARRIOTT DRIVE  
LINCOLNSHIRE, ILLINOIS 60069

With a copy to:

LAW OFFICES OF NEAL M. GOLDBERG  
39 SOUTH LASALLE STREET  
SUITE 1200  
CHICAGO, ILLINOIS 60603

(b) If to the First Party:

BEAR FLAG, INC.  
ERIC KERLOW  
MATTHEW WILBUR  
WILLIAM PLATT  
3738 NORTH SOUTHPORT AVENUE  
CHICAGO, ILLINOIS 60613

Any such notice may be served by personal delivery thereof to the other party which delivery shall constitute service of notice hereunder on the date of such delivery.

40. Applicable Law: This Mortgage shall be construed pursuant to and in accordance with the laws of the State of Illinois.

41. Release: Mortgagee shall release this Mortgage and the lien thereof by proper instrument upon payment of all Indebtedness Hereby Secured.

42. Land Trustee Exculpation: The Mortgage is executed by First Party not personally, but as Trustee as aforesaid, in the exercise of the power and authority conferred upon and vested in it as such Trustee (and said First Party hereby warrants that it possesses full power and authority to execute this instrument), and it is expressly understood and agreed that nothing herein or in the Note contained shall be construed as creating any liability on said First Party personally, to pay the Note or any interest that may accrue thereon or any indebtedness accruing hereunder, or to perform any covenant, representation, agreement or condition, either express or implied, herein contained, or with regard to any warranty contained in this Mortgage except the warranty made in this Paragraph, all such liability, if any, being expressly waived by the Mortgagee and by every person now or hereafter claiming any right or security hereunder, and that so far as the First Party and its successors and assigns are concerned, the legal holder or holders of the Note and the owner or owners of any indebtedness accruing hereunder shall look to the Premises for the payment thereof in the manner herein and in the Note provided but this shall not be construed in any way so as to affect or impair the lien of the Mortgage or the Mortgagee's right to foreclose thereof, or construed in any way so as to limit or restrict any of the rights and remedies in any such foreclosure proceedings or other enforcement of the payment of the Indebtedness Hereby Secured out of and from the security given therefor in the manner herein and in the Note provided for to affect or impair the personal liability of Mortgagor on the Note (exclusive of First Party) or any guarantors thereof.



IN WITNESS WHEREOF, the First Party has caused this Mortgage to be duly signed, sealed and delivered the day and year first above written.

AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, not personally, but as Trustee under Trust Agreement dated February 16, 1998 and known as Trust No. 600495-09,

BY: [Signature]  
TRUST OFFICER

ATTEST: \_\_\_\_\_

ITS: \_\_\_\_\_

BEAR FLAG, INC., an Illinois corporation

BY: [Signature]

ITS: SECRETARY

ATTEST: [Signature]

ITS: President

[Signature]  
ERIC KERLOW, INDIVIDUALLY

[Signature]  
MATTHEW WILBUR, INDIVIDUALLY

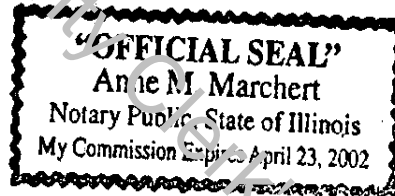
[Signature]  
WILLIAM FLATT, INDIVIDUALLY

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

I, Anne M. Marchert, a Notary Public, in and for said County in the State aforesaid do hereby certify that Gregory S. Kasprzyk and EILEEN E. NEARY, of AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, not personally, but as Trustee under Trust Agreement dated February 16, 1998 and known as Trust No. 600495-09 personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such VICE PRESIDENT and ASSISTANT SECRETARY respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary acts and as the free and voluntary act of said Bank, as Land Trustee, for the uses and purposes therein set forth; and the said did also then and therein acknowledge that he, as custodian of the corporate seal of said Bank, did affix the corporate seal of said Bank to said instrument, as his own free and voluntary act and as the free and voluntary act of said Bank, as Land Trustee, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this MAR 01 1999 day of February, 1999.

Anne M. Marchert  
NOTARY PUBLIC



\_\_\_\_\_  
Commission Expires

# UNOFFICIAL COPY

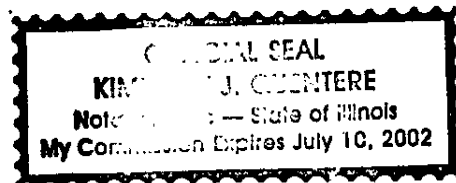
99203269

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

Kimberly Quentere a Notary Public, in and for said County in the State aforesaid do hereby certify that Eric Korbow, William [unclear] BEAR FLAG, INC., an Illinois corporation, and \_\_\_\_\_ its \_\_\_\_\_, personally known to me to be the same persons whose names are subscribed to the foregoing instrument appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act for the corporation, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this \_\_\_\_\_ day of February, 1999.

Kimberly J. Quentere  
NOTARY PUBLIC



July 10, 2002  
Commission Expires

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

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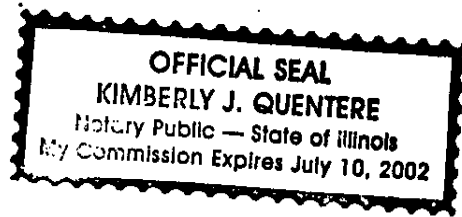
STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

I, Kimberly Quentere, a Notary Public, in and for said County in the State aforesaid do hereby certify that ERIC KERLOW, individually, personally known to me to be the same person whose name is subscribed to the foregoing instrument appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 22 day of February, 1999.

Kimberly Quentere  
NOTARY PUBLIC

July 10, 2002  
Commission Expires



Property of Cook County Clerk's Office

# UNOFFICIAL COPY

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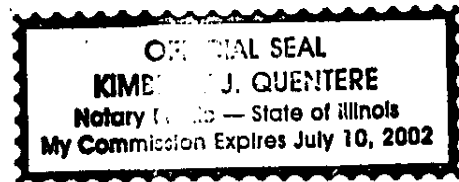
STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

I, Kimberly Quentere, a Notary Public, in and for said County in the State aforesaid do hereby certify that MATTHEW WILBUR, individually, personally known to me to be the same person whose name is subscribed to the foregoing instrument appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 22 day of February, 1999.

Kimberly Quentere  
NOTARY PUBLIC

July 10, 2002  
Commission Expires



Property of Cook County Clerk's Office

# UNOFFICIAL COPY

STATE OF ILLINOIS            )  
  ) SS.  
COUNTY OF COOK            )

99203269

I, Kimberly Quentere, Notary Public, in and for said County in the State aforesaid do hereby certify WILLIAM PLATT, individually, personally known to me to be the same person whose name is subscribed to the foregoing instrument appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 22 day of February, 1999.

Kimberly Quentere  
NOTARY PUBLIC

July 10, 2002  
Commission Expires

**OFFICIAL SEAL**  
KIMBERLY J. QUENTERE  
Notary Public — State of Illinois  
My Commission Expires July 10, 2002

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

99203269

## LEGAL DESCRIPTION

LOTS 1, 2 AND 3 IN BLOCK 2 IN THE SUBDIVISION OF BLOCK 29 OF EXECUTORS OF W.E. JONES SUBDIVISION OF SECTION 19, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS (EXCEPT THE SOUTHWEST 1/4 OF THE NORTHEAST 1/4 OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF THE EAST 1/2 OF THE SOUTHWEST 1/4 THEREOF) IN COOK COUNTY, ILLINOIS.

Commonly known as: 2001-07 West Addison Street, Chicago, Cook County, Illinois

P.I.N.: 14-19-307-008  
14-19-307-009

Property of Cook County Clerk's Office

**EXHIBIT "A"**

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