

JUNIOR MORTGAGE



99295370

THIS JUNIOR MORTGAGE ("Mortgage") is made effective as of February 15, 1999 by Harris Bank Hinsdale, National Association, as Trustee under a Trust Agreement dated January 26, 1999 and known as Trust No. L-3809 (hereinafter called "Mortgagor").

WITNESSETH:

16

WHEREAS, simultaneously with the execution of this Mortgage, Mortgagor, Dinkha Development, Inc., an Illinois corporation ("Dinkha Development"), Odisho K. Dinkha ("O. Dinkha") and Habronia B. Dinkha ("H. Dinkha") (Mortgagor, Dinkha Development, O. Dinkha and H. Dinkha are hereinafter collectively referred to as "Borrower") executed a Revolving Credit Note of even date herewith in the maximum principal sum of \$485,000.00 (the "Note") in favor of Belcorp Financial Services, Inc., an Illinois corporation ("Mortgagee");

WHEREAS, simultaneously with the execution of this Mortgage, Borrower also executed a Note of even date herewith in the principal sum of \$140,000.00 in favor of Mortgagee (the "Parkside Note");

WHEREAS, the execution and delivery of this Mortgage is a condition precedent to Mortgagee's obligation to make the loan that is evidenced by the Note, and

P.I.N.: 10-17-415-017 and 10-17-415-018

THIS MORTGAGE WAS PREPARED BY:

Robert L. Cimala
Cimala & Associates, P.C.
38 South Blaine Avenue
Hinsdale, Illinois 60521

AFTER RECORDING, THIS MORTGAGE SHOULD BE RETURNED TO:

Robert L. Cimala
Cimala & Associates, P.C.
38 South Blaine Avenue
Hinsdale, Illinois 60521



ADDRESS OF PREMISES:

9001 Parkside Avenue
Morton Grove, Illinois 60053

E.R

WHEREAS, the Note is incorporated herein by reference;

NOW, THEREFORE, TO SECURE to Mortgagee:

- (a) The payment of the indebtedness evidenced by the Note, with interest thereon, and all renewals, extensions and modifications thereof;
- (b) The payment of all other sums, with interest, advanced in accordance herewith to protect the security of this Mortgage;
- (c) The payment of any other indebtedness of Borrower to Mortgagee, howsoever evidenced; and
- (d) The performance of the covenants and agreements of Mortgagor herein contained;

Mortgagor does hereby MORTGAGE, GRANT AND CONVEY to Mortgagee the property described in Exhibit A attached hereto and incorporated herein by reference, located in Cook County, Illinois, hereby releasing and waiving all homestead rights provided by the laws of the State of Illinois, which, with the property hereinafter described, is referred to herein as the "premises",

TOGETHER with all buildings and improvements now or hereafter constructed upon said premises or any part thereof, all heretofore or hereafter vacated alleys and streets abutting said premises, and all fixtures and equipment located thereon or installed hereafter, said fixtures and equipment being pledged primarily and on a parity with said premises and which shall be deemed to be part of the premises to the extent they are permanently affixed thereto;

TOGETHER with all rents, issues, profits and leases thereof for so long and during all such times as Mortgagor and Mortgagor's successors and assigns may be entitled thereto, and all tenements, hereditaments, easements and appurtenances affecting the premises.

TO HAVE AND TO HOLD the premises unto Mortgagee, its successors and assigns, forever, for the purposes and uses set forth herein.

MORTGAGOR DOES HEREBY COVENANT AND AGREE AS FOLLOWS:

FIRST: Preservation and Maintenance of Property: Mortgagor will abstain from and will not permit the commission of waste on the premises and will keep the buildings, improvements, fixtures and equipment now or hereafter thereon in good repair and will make replacements thereto as and when the same become necessary. Mortgagor shall promptly notify Mortgagee in writing of the occurrence of any loss or damage to the premises. Mortgagor shall not materially alter the buildings, improvements, fixtures or equipment now or hereafter upon said premises, or remove the same therefrom, or permit any tenants or other person to do so, without the prior written consent of the Mortgagee. Mortgagor will not permit any portion of the premises to be used for any unlawful purposes. Mortgagor covenants and agrees that in the ownership, operation and management of the

premises Mortgagor will observe and comply with all applicable federal, state and local statutes, ordinances, regulations, orders and restrictions including, without limitation, all zoning, building code and environmental protection ordinances, regulations, orders and restrictions.

SECOND: Charges and Liens: Mortgagor shall pay when due all taxes and assessments that may be levied on said premises, and shall promptly deliver to Mortgagee receipts showing payment thereof. Mortgagor shall pay when due all taxes and assessments that may be levied upon or on account of this Mortgage or the indebtedness secured hereby or upon the interest or estate in said premises created or represented by this Mortgage whether levied against Mortgagor or otherwise.

THIRD: Insurance: Mortgagor shall keep the premises and all buildings, improvements, fixtures and equipment now or hereafter thereon insured. The policies of insurance shall be in form, with insurers, and in such amounts as may be reasonably satisfactory to Mortgagee. Mortgagor shall deliver to Mortgagee the original (or certified) copy of each policy of insurance, or a certificate of insurance, and evidence of payment of all premiums for each such policy. Such policies of insurance shall contain a standard mortgagee clause naming Mortgagee as mortgagee thereunder as its interests may appear, and shall provide that the insurance companies will give Mortgagee at least thirty (30) days' written notice before any such policy or policies of insurance shall be altered or cancelled and that no act or default of Mortgagor or any other person or entity shall affect the right of Mortgagee to be covered under such policy or policies of insurance in case of loss or damage. Mortgagor hereby directs all insurers under such policies of insurance to pay all proceeds payable thereunder to Mortgagee as its interests may appear.

FOURTH: Protection of Mortgagee's Security: If default be made by Mortgagor in the payment of any of the aforesaid taxes or assessments, in keeping the premises in a proper state of maintenance and repair, or in performing any other covenant of Mortgagor herein, Mortgagee may at its option and without any obligation on its part so to do, pay said taxes and assessments, make such repairs and perform such maintenance, and perform any other covenant of Mortgagor herein. All reasonable amounts expended by Mortgagee hereunder shall be secured hereby and shall be due and payable by Mortgagor to Mortgagee forthwith on demand.

FIFTH: Reimbursement for Mortgagee Legal Expenses: Should Mortgagee incur any cost or expense, including attorneys' fees, in enforcing its rights hereunder or in protecting the premises, whether or not any legal action is filed, or in the event that Mortgagee is made a party to any suit or proceeding by reason of the interest of Mortgagee in the premises, or if Mortgagee institutes proceedings to foreclose the mortgage granted hereunder, Mortgagor shall reimburse Mortgagee for all reasonable costs and expenses, including reasonable attorneys' fees, incurred by Mortgagee in connection therewith. All amounts incurred by Mortgagee hereunder shall be secured hereby and shall be due and payable by Mortgagor to Mortgagee forthwith on demand.

SIXTH: Acceleration: Should a default occur as specified in Paragraph Sixteenth herein or under the Note, or in the event judicial proceedings are instituted to foreclose a lien upon the mortgaged premises or any part thereof, Mortgagee may at any time after such default, and without notice, declare the principal balance of the indebtedness secured hereby, together with interest

UNOFFICIAL COPY

thereon, to be due and payable immediately. The commencement of proceedings to foreclose this Mortgage shall, in any event, be deemed such declaration. In addition to any right or remedy which Mortgagee may now or hereafter have by law, Mortgagee shall have the right and power: (a) to foreclose this Mortgage by legal action as provided by Illinois law and the rules of practice relating thereto; and (b) to enter upon and take possession of the premises with the irrevocable consent of Mortgagor as given and evidenced by its execution of this instrument, and as Mortgagee in possession, let the premises, and receive all the rents, issues and profits thereof, which are overdue, due or to become due, and to apply the same, after the payment of all reasonable charges and expenses deemed by Mortgagee to be necessary, on account of the indebtedness secured hereby, Mortgagor for itself and any subsequent owner of the premises hereby agreeing to pay to Mortgagee in advance a reasonable rent for the premises occupied by it, and in default of so doing hereby agrees that it may be dispossessed by the usual legal proceedings available against any defaulting tenant of real estate and further agreeing to permit any action to be brought in its name to dispossess any tenant defaulting in the payment of rent to Mortgagee or violating the terms of its occupancy, which right and power are effective and may be enforced either with or without any action to foreclose this Mortgage.

SEVENTH: Application of Proceeds of Foreclosure: Upon a foreclosure sale of the premises or any part thereof, the proceeds of such sale shall be applied in the following order:

- (a) To the payment of all costs of the suit of foreclosure, including reasonable attorneys' fees and the costs of title searches and abstracts;
- (b) To the payment of all other expenses of Mortgagee incurred in connection with the foreclosure, including all money expended by Mortgagee and all other amounts payable by Mortgagor to Mortgagee hereunder;
- (c) To the payment of the principal and interest of the indebtedness secured hereby; and
- (d) The surplus, if any, to Mortgagor or to whomever else is lawfully entitled thereto.

EIGHTH: Waiver of Homestead; Waiver of Redemption: To the extent permitted by applicable law, Mortgagor waives and releases all rights and benefits under and by virtue of the Homestead Exemption Laws of the State of Illinois and all other exemption laws, moratorium laws or other laws limiting the enforcement hereof. To the extent permitted by applicable law, Mortgagor **WAIVES ANY AND ALL RIGHTS OF REDEMPTION UNDER ANY JUDGMENT OF FORECLOSURE OF THIS MORTGAGE, AND ANY REDEMPTION RIGHTS GRANTED BY ILLINOIS LAW, ON BEHALF OF MORTGAGOR, AND EACH AND EVERY PERSON ACQUIRING ANY INTEREST IN OR TITLE TO THE MORTGAGED PREMISES AS OF OR SUBSEQUENT TO THE DATE OF THIS MORTGAGE.** Further, Mortgagor hereby waives the benefit of all appraisal, valuation, stay or extension laws, and any reinstatement rights provided by Illinois law, now or hereafter in force, and all rights of marshalling in the event of any sale hereunder of the mortgaged premises or any part thereof or any interest therein.

NINTH: Receiver, Mortgagee in Possession: Upon or at any time after the filing of any bill, complaint or petition to foreclose this Mortgage, the court may, upon application of Mortgagee, place Mortgagee in possession or appoint a receiver of the mortgaged premises. Such appointment may be made either before or after the sale, without notice, and without regard to the solvency or insolvency, at the time of application for appointment, of the person or persons, if any, liable for the payment of the indebtedness secured hereby and without regard to the then value of the mortgaged premises or whether the same shall be then occupied as a homestead or not, and without bond being required of the applicant. Such receiver or mortgagee in possession, to the extent permitted by law, shall have the power to take possession, control and care of the premises, and to collect the rent, issues and profits of the premises during the pendency of such foreclosure, 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 Mortgagor, except for the intervention of such mortgagee in possession or receiver, would be entitled to collect 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 from time to time may authorize the receiver to apply the net income in his hands in payment in whole or in part of:

(a) The costs of management of the property and collection of rents including, but not limited to, the fees of the receiver or mortgagee in possession, premiums for receiver's bonds and reasonable attorneys' fees;

(b) The indebtedness secured hereby or of any judgment foreclosing this Mortgage or any tax, special assessment or other lien which may be or become superior to the lien hereof, or of such judgment, provided such application is made prior to the foreclosure sale; and

(c) The deficiency in case of sale and deficiency. Any such proceeding shall in no manner prevent or retard the collection of said indebtedness by foreclosure or otherwise.

TENTH: Condemnation: Any and all awards hereafter made or to be made to the present and all subsequent owners of the premises, by any governmental or other lawful authority for taking, by condemnation or eminent domain, the whole or any part of the premises or any improvement located thereon or any easement therein or appurtenant thereto (including any award from the United States government at any time after the allowance of the claim therefor, the ascertainment of the amount thereof and the issuance of the warrant for payment thereof), are hereby assigned by Mortgagor to Mortgagee, which award Mortgagee is hereby authorized to collect and receive from the condemnation authorities, and Mortgagee is hereby authorized to give appropriate receipts and acquittance therefor. Mortgagor covenants and agrees that Mortgagor will give Mortgagee immediate notice of the actual or threatened commencement of any such proceedings under condemnation or eminent domain, affecting all or any part of the premises or any easement therein or appurtenance thereto, including severance and consequential damage and change in grade of streets and will deliver to Mortgagee copies of any and all papers served in connection with any such proceedings. Mortgagor further covenants and agrees to make, execute and deliver to Mortgagee, at any time or times upon request, free, clear and discharged of any encumbrances of

any kind whatsoever, any and all further assignments and/or instruments deemed necessary by Mortgagee for the purpose of validly and sufficiently assigning all awards and other compensation heretofore and hereafter to be made to Mortgagor for any taking, either permanent or temporary, under any such proceeding. Mortgagee shall make available the proceeds of any award received in connection with and in compensation for any such damage or taking for the purpose of rebuilding and restoring so much of the improvements within the premises affected thereby, subject to the following conditions:

- (a) That Mortgagor is not then in default under any of the terms, covenants and conditions of any of the Loan Documents (as hereinafter defined);
- (b) That all then existing leases affected in any way by such damage or taking shall continue in full force and effect without reduction or abatement of rental (except during the period of untenability);
- (c) That Mortgagee shall first be given satisfactory proof that such improvements have been fully restored or that by the expenditure of such money will be fully restored, free and clear of all liens, except as to the lien of the Mortgage of even date herewith executed by Mortgagor in favor of Mortgagee relating to the premises to secure the Parkside Note (the "Superior Lien Holder") and the lien of this Mortgage;
- (d) That in the event such award shall be insufficient to restore or rebuild the said improvements, Mortgagor shall deposit promptly with Mortgagee the amount of such deficiency, which, together with the award proceeds, shall be sufficient to restore and rebuild the premises;
- (e) That in the event Mortgagor shall fail within a reasonable time, subject to delays beyond their control, to restore or rebuild the said improvements, Mortgagee, at its option, may restore or rebuild the said improvements for or on behalf of Mortgagor and for such purpose may do all necessary acts; and
- (f) That the excess of said award not necessary for completing such restoration shall be applied as hereinafter provided as a credit upon any portion, as selected by Mortgagee, of the indebtedness secured hereby.

In the event any of the said conditions are not or cannot be satisfied, then the proceeds shall be paid over to Mortgagee and shall be applied toward the payment of all amounts payable by Mortgagor to Mortgagee, whether or not then due and payable. Under no circumstances shall Mortgagee become personally liable for the fulfillment of the terms, covenants and conditions contained in any of the said leases of the premises nor obligated to take any action to restore the said improvements.

ELEVENTH: Loan Purpose: Mortgagor warrants that the proceeds received under the Note will be used solely for business purposes.

TWELFTH: Severability: Nothing contained herein or in the or any transaction related thereto shall be construed or shall so operate either presently or prospectively (a) to require Mortgagor to pay interest at a rate greater than is now lawful in such case to contract for, but shall require payment of interest only to the extent of such lawful rate, or (b) to require Mortgagee to make any payment or do any act contrary to law, and if any clause or provision herein contained shall otherwise so operate to invalidate this Mortgage, in whole or in part, then such clauses and provisions only shall be held for naught as though not herein contained and the remainder of this Mortgage shall remain operative and in full force and effect, and Mortgagee shall be given a reasonable time to correct any error.

THIRTEENTH: Partial Releases: Mortgagee, without notice, and without regard to the consideration, if any, paid therefor, and notwithstanding the existence at that time of any inferior liens, may release any part of the premises or any person liable for any indebtedness secured hereby, without in any way affecting the liability of any party to the Note, this Mortgage or any other security given for the indebtedness secured hereby and without in any way affecting the priority of the lien of this Mortgage and may agree with any party obligated on said indebtedness herein to extend the time for payment of any part or all of the indebtedness secured hereby. Such agreement shall not, in any way, release or impair the lien created by this Mortgage, or reduce or modify the liability, of any person or entity personally obligated for the indebtedness secured hereby.

FOURTEENTH: Environmental Warranty:

(a) Mortgagor hereby represents and warrants to Mortgagee that neither Mortgagor nor, to best of Mortgagor's knowledge after reasonable investigation, any other person or entity, has ever caused or permitted any Hazardous Material (as hereafter defined) to be placed, held, located or disposed of on, under or at the premises or any part thereof, and that the premises have never been used by Mortgagor or, to the best of Mortgagor's knowledge after reasonable investigation, by any other person or entity as a temporary or permanent dump or storage site for any hazardous, toxic or dangerous waste, substance or material defined as such in (or for the purposes of) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, any so-called "Superfund" or "Superlien" law, and shall include, but shall not be limited to, any substances, materials or wastes that are regulated by any local governmental authority, the State of Illinois or the United States of America because of toxic, flammable, explosive, corrosive, reactive, radioactive or other properties that may be hazardous to human health or environment, including petroleum products, asbestos and including any material or substances that are listed in the United States Department of Transportation Hazardous Material Table, as amended, 49 C.F.R. 172.101, or in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. subsections 9601 et seq., or the Resources Conservation and Recovery Act, as amended, 42 U.S.C. subsections 6901, et seq., or any other applicable governmental law or regulation imposing liability or standards of conduct concerning any hazardous, toxic or dangerous substances, waste or material, as now or at any time hereafter in effect.

- (b) The representations and warranties made in this Paragraph Fourteenth shall survive:
- (1) the sale, transfer or conveyance of all or any portion of the premises;
 - (2) the foreclosure of any liens on the premises by Mortgagee or a third party or the conveyance thereof by deed in lieu of foreclosure;
 - (3) repayment of the Note; and
 - (4) all other indicia of the termination of the relationship between Mortgagor and Mortgagee.

FIFTEENTH. Warrant and Defense of Title: At the time of the execution and delivery of this instrument, Mortgagor is truly seized of the premises in fee simple, free of all liens and encumbrances whatsoever except for the lien of the Superior Lien Holder. Mortgagor will forever warrant and defend the same against any and all claims whatsoever, and the lien created hereby is and will be kept a second position lien upon the premises and every part thereof subordinate only to the lien of the Superior Lien Holder. Mortgagor shall pay when due all water charges, sewer service charges and all other amounts which might become a lien upon the premises prior to this Mortgage and shall, upon written request, furnish to Mortgagee duplicate receipts therefor.

SIXTEENTH: Default:

- (a) The occurrence of any of the following events or conditions shall constitute a default hereunder ("Event of Default"):
- (1) Borrower fails to pay the principal sum secured hereby, any installment thereof or interest thereon, as they severally become due;
 - (2) Mortgagor fails to perform or observe any term, covenant or condition in this Mortgage;
 - (3) An "Event of Default" occurs under the Note;
 - (4) An "Event of Default" occurs under the Mortgage of even date herewith executed by Mortgagor in favor of Mortgagee relating to the real estate commonly known as 6026-6034 N. Keystone Avenue, Chicago, Cook County, Illinois (the "Keystone Mortgage");
 - (5) An "Event of Default" occurs under the Parkside Note;
 - (6) An "Event of Default" occurs under the Mortgage of even date herewith executed by Mortgagor in favor of Mortgagee relating to the premises and which secures the Parkside Note (the "Parkside Mortgage");

- (7) An "Event of Default" occurs under the Assignment of Rents and Leases of even date herewith executed by Mortgagor in favor of Mortgagee relating to the real estate commonly known as 6026-6034 N. Keystone Avenue, Chicago, Cook County, Illinois (the "Keystone Assignment");
- (8) An "Event of Default" occurs under the Collateral Assignment Under Land Trust of even date herewith executed by Dinkha Development, O. Dinkha and H. Dinkha in favor of Mortgagee relating to the beneficial interest under that certain Trust Agreement dated January 26, 1999 and known as Trust No. L-3809 with Harris Bank Hinsdale, National Association, as Trustee (the "Keystone Collateral Assignment");
- (9) An "Event of Default" occurs under the Security Agreement of even date herewith executed by and between Dinkha Development and Mortgagee (the "Business Security Agreement");
- (10) An "Event of Default" occurs under the Security Agreement of even date herewith executed by O. Dinkha and H. Dinkha, on the one hand, and Mortgagee, on the other hand (the "Dinkha Security Agreement");
- (11) An "Event of Default" occurs under the Guaranty of even date herewith executed by O. Dinkha, H. Dinkha and William J. Dinkha in favor of Mortgagee (the "Guaranty");
- (12) Dinkha Development's breach of any representation, warranty, term or condition of the Construction Loan Escrow Trust and Disbursement Agreement dated February 15, 1999 by and among Dinkha Development, Mortgagee and Cimala & Associates, P.C. (the "Construction Escrow Agreement");
- (13) Dinkha Development's, O. Dinkha's or H. Dinkha's breach of any representation, warranty, term or condition of the Escrow Agreement of even date herewith by and among Mortgagee, Cimala & Associates, P.C., Dinkha Development, O. Dinkha and H. Dinkha (the "Escrow Agreement");
- (14) Inland Custom Construction, Inc.'s breach of any representation, warranty, term or condition of the Factoring Agreement of even date herewith by and between Inland Custom Construction, Inc. and Mortgagee (the "Factoring Agreement");
- (15) A petition under the Federal Bankruptcy Reform Act of 1978, as amended, or any similar law, state or federal, whether now or hereafter existing, is filed by or against Borrower or William J. Dinkha which is not dismissed within forty-five (45) calendar days thereafter;

- (16) A trustee or a receiver is appointed for all or any portion of the premises or for Borrower or William J. Dinkha for a substantial portion of their respective assets, and such trustee or receiver is not discharged within forty-five (45) calendar days thereafter;
- (17) Borrower or William J. Dinkha makes an assignment for the benefit of creditors;
- (18) Any statement or certificate of any type, including all financial statements of Borrower or William J. Dinkha, previously submitted to Mortgagee is materially false, incorrect or incomplete;
- (19) Borrower and William J. Dinkha collectively suffer final judgments for payment of money aggregating in excess of five percent (5%) of the total balance due Mortgagee under the Note;
- (20) A judgment creditor of Borrower or William J. Dinkha obtains a lien on or possession of any part of their respective assets or of the premises by any means, which is not discharged or released within forty-five (45) calendar days thereafter;
- (21) A notice of lien, levy or assessment is delivered to Borrower or William J. Dinkha or is filed of record, with respect to the premises or any part of their respective assets, by the United States or any department, instrumentality or agency thereof, or by any state, county, municipal or other governmental agency;
- (22) There occurs any material uninsured damage or destruction to the premises or any personal property located thereon; or
- (23) Mortgagor mortgages, grants or conveys the premises to any person or entity other than Mortgagee without the prior written consent of Mortgagee, which consent shall not be unreasonably withheld.

(This Mortgage, the Note, the Keystone Mortgage, the Parkside Note, the Parkside Mortgage, the Keystone Assignment, the Keystone Collateral Assignment, the Business Security Agreement, the Dinkha Security Agreement, the Guaranty, the Construction Escrow Agreement, the Escrow Agreement, the Factoring Agreement and any other documents evidencing or securing the Note are collectively referred to herein as the "Loan Documents").

(b) Upon the occurrence of an Event of Default, the entire indebtedness secured hereby shall, at the option of Mortgagee, without notice to Mortgagor, become immediately due and payable, and, thereupon, or at any time during the existence of any such default, Mortgagee may proceed to foreclose this Mortgage by judicial proceedings according to the statutes in such case provided, and any failure to exercise said option shall not constitute a waiver of the right to exercise

UNOFFICIAL COPY

the same at any other time. Mortgagee shall additionally have the right to file an action at law on the Note and to avail itself of any other remedy provided for by the Note, any of the other Loan Documents or by applicable law, which remedies shall be concurrent and may be pursued simultaneously.

(c) In any case in which, under the provisions of this Mortgage, Mortgagee has a right to institute foreclosure proceedings, whether or not the entire principal sum secured hereby is declared to be immediately due as aforesaid, or whether before or after the institution of legal proceedings to foreclose the lien hereof or before or after sale thereunder, upon demand of Mortgagee, Mortgagor shall surrender to Mortgagee and Mortgagee shall be entitled to take actual possession of the premises, or any part thereof, personally or by its agents or attorneys, as for condition broken and Mortgagee in its discretion may enter upon and take and maintain possession of all or any part of the premises, together with all documents, books, records, papers and accounts of Mortgagor or the then owner of the premises relating to the ownership, operation and maintenance of the premises, and may exclude Mortgagor, any guarantors of the Note, and their agents or servants, wholly therefrom and may, as attorney in fact or agent of the Mortgagor, or in its own name as Mortgagee and under the powers herein granted:

- (1) hold, operate, manage and control the premises, either personally or by its agents, and with full power to use such measures, legal or equitable, as in its discretion or in the discretion of its successors or assigns may be deemed proper or necessary to enforce the payment or security of the avails, rents, issues and profits of the premises including actions for recovery of rent, actions in forcible detainer and actions in distress for rent, hereby granting full power and authority to exercise each and every of the rights, privileges and powers herein granted at any and all times hereafter, without notice to Mortgagor;
- (2) cancel or terminate any lease or sublease for any cause or on any ground which would entitle Mortgagor to cancel the same,
- (3) elect or disaffirm any lease or sublease made subsequent to this Mortgage or subordinated to the lien hereof;
- (4) extend or modify any then existing leases and make new leases, which extensions, modifications and new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the Note and the date of issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor and all persons whose interest in the premises are subject to the lien hereof and to be binding also upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the mortgage indebtedness, satisfaction of

any foreclosure judgment, or issuance of any certificate of sale or deed to any purchaser;

- (5) make all necessary or proper repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements to the premises as Mortgagee may deem judicious; and
- (6) insure and reinsure the premises against all risks incidental to Mortgagee's possession, operation and management thereof and receive all avails, rents, issues and profits therefrom.

(d) Any avails, rents, issues and profits of the premises received by Mortgagee after having possession of the premises or pursuant to any assignment thereof to Mortgagee under the provisions of this Mortgage shall be applied in payment of or on account of the following, in such order as Mortgagee (or in case of a receivership, as the court) may determine in its reasonable business judgment:

- (1) to the payment of the operating expenses of the premises, including reasonable compensation to Mortgagee or the receiver and its agent or agents, if management of the premises has been delegated to an agent or agents, and shall also include lease commissions and other compensation and expenses of seeking and procuring tenants and entering into leases, established claims for damages, if any, and premiums on insurance hereinabove authorized;
- (2) to the payment of taxes, special assessments and water taxes now due or which may hereafter become due on the premises, or which may become a lien prior to the lien of this Mortgage;
- (3) to the payment of all reasonable repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements of the premises, to place said property in such condition as will, in the reasonable judgment of Mortgagee or receiver, make it readily saleable or rentable; and
- (4) to the payment of any indebtedness secured hereby or any deficiency which may result from any foreclosure sale.

SEVENTEENTH: Transfer or Property: If all or any part of the premises is sold, transferred, conveyed, assigned or alienated (which shall include the execution of any form of installment agreement for deed) by Mortgagor without the Mortgagee's prior written consent, which consent may be withheld or granted by Mortgagee in its sole and absolute discretion, Mortgagee may, at Mortgagee's option, declare all the sums secured by this Mortgage to be immediately due and payable without notice to Mortgagor.

EIGHTEENTH: Notice: All notices, demands and requests required or permitted to be given to Mortgagor or Mortgagee hereunder or by law shall be deemed given when

delivered in person or two days after deposit in the United States mail with full postage prepaid by certified or registered mail, return receipt requested, addressed as follows:

Mortgagor at: 50 S. Lincoln Street
Hinsdale, IL 60521
Attention: Land Trust Department

Mortgagee at: Suite 124
120 East Ogden Avenue
Hinsdale, IL 60521

or to such other address as the party to be served with notice may have furnished in writing to the party seeking or desiring to serve notice as a place for the service of notice.

NINETEENTH: Remedies Cumulative: Each and all of the rights, remedies and benefits provided to Mortgagee herein shall be cumulative and shall not be exclusive of any other rights, remedies or benefits provided by the Note or any of the other Loan Documents or of any other rights, remedies or benefits allowed by law. Any waiver by Mortgagee of any default shall not constitute a waiver of any similar or other default.

TWENTIETH: Successors and Assigns Bound; Joint and Several Liability; Captions: All of the covenants and conditions hereof shall run with the land and shall be binding upon and inure to the benefit of the executors, administrators, representatives, heirs, beneficiaries, successors and assigns of Mortgagor and Mortgagee, respectively, and all persons claiming through or under them. Notwithstanding anything in this Mortgage to the contrary, the obligations and liabilities of Mortgagor under this Mortgage may not be assigned, conveyed or transferred in any manner whatsoever without the prior written consent of Mortgagee, which consent may be withheld or granted by Mortgagee in its sole and absolute discretion for any reason whatsoever. Any reference herein to Mortgagee shall include the successors and assigns of Mortgagee. The captions and headings of the paragraphs of this Mortgage are for convenience only and are not to be used to interpret or define the provisions hereof.

TWENTY-FIRST: Gender and Number: All nouns, pronouns and relative terms relating to Mortgagor shall be deemed to be masculine, feminine or neuter, singular or plural, as the context may indicate.

TWENTY-SECOND: Release: Upon the payment in full of the indebtedness evidenced by the Note and the payment of all other sums advanced in accordance herewith to protect the security of this Mortgage, Mortgagee shall deliver to Mortgagor a fully-executed release in a recordable form that releases all of Mortgagee's rights, title and interests in and to this Mortgage.

TWENTY-THIRD: Exculpatory Clause: This document is made and executed by Harris Bank Hinsdale, National Association, as Land Trustee, and is accepted upon the express understanding and agreement of the parties hereto that Harris Bank Hinsdale, National Association enters into same not personally, but only as such Trustee, and that, anything herein to the contrary

notwithstanding, each and all of the indemnities, representations, warranties, covenants, agreements and undertakings herein contained are intended not as the personal indemnities, representations, warranties, covenants or undertakings of Harris Bank Hinsdale, National Association, or for the purpose of binding Harris Bank Hinsdale, National Association personally, but are made and intended for the purpose of binding only that portion of the Trust Property described herein and this document is executed and delivered by Harris Bank Hinsdale, National Association not in its own right, but solely at the direction of the party having power of direction over the trust and in the exercise of the powers conferred upon Harris Bank Hinsdale, National Association as such Trustee, and that no personal liability is assumed by, nor shall be asserted against, Harris Bank Hinsdale, National Association or its agents or employees because or on account of its making or executing this document or on account of any indemnity, representation, warranty, covenant, agreement or undertaking herein contained including, but not limited to, any liability for violations of the Comprehensive Environmental, Response, Compensation and Liability Act of 1980, 42 U.S.C. Section 9601 et seq., as amended, or any other municipal, county, state or federal laws, ordinances, codes or regulations pertaining to the Trust Property or in the use and occupancy thereof, all such liability, if any, being expressly waived and released. It is further understood and agreed that Harris Bank Hinsdale, National Association individually, or as Trustee shall have no obligation to see to the performance or non-performance of any indemnity, representation, warranty, covenant, agreement or undertaking herein contained, and shall not be liable for any action or non-action taken in violation thereof. It is further provided, however, that this paragraph shall not impair the enforceability, or adversely affect the obligations of any other signatories hereto or under any separate instrument of adoption or guarantee nor otherwise impair the validity of any indebtedness evidenced or secured by this document except as expressly set forth.

IN WITNESS WHEREOF, Harris Bank Hinsdale, National Association, as Trustee as aforesaid, has executed this Mortgage as of the date first above written.

HARRIS BANK HINSDALE, NATIONAL ASSOCIATION, NOT PERSONALLY BUT SOLELY AS TRUSTEE AS AFORESAID

By: Shirley M. Nolan
Its: Assistant Vice President

ATTEST:

By: Linda J. White
Its: Investment Manager

UNOFFICIAL COPY

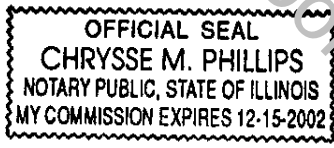
STATE OF ILLINOIS)
) SS.
COUNTY OF DUPAGE)

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY that SHIRLEY M. NOLAN and Handa T. White, respectively, **Assistant Vice President** (title) and **Investment Manager** (title) of Harris Bank Hinsdale, National Association, 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 of Harris Bank Hinsdale, National Association for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 15th day of February, 1999.



Chrysse M. Phillips
Notary Public



Cook County Clerk's Office

UNOFFICIAL COPY

99295370

Exhibit A

LOTS 17 AND 18 IN BLOCK 8 IN HIELD AND MARTIN'S DEMPSTER STREET
TERMINAL SUBDIVISION IN SECTIONS 16 AND 17, TOWNSHIP 41 NORTH,
RANGE 13, LYING EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK
COUNTY, ILLINOIS.

Address of Premises: 9001 Parkside Avenue, Morton Grove, Illinois 60053

P.I.N.: 10-17-415-017 and 10-17-415-018

Property of Cook County Clerk's Office