

UNOFFICIAL COPY

0 3 5 7 4 5 6

3574856

MORTGAGE AND SECURITY AGREEMENT

DATED DECEMBER 2, 1986

BETWEEN

AMALGAMATED TRUST AND SAVINGS BANK,
not in its individual capacity but as
trustee under Trust Agreement dated
May 1, 1970 and known as Trust No. 2167

and

SMA LIFE ASSURANCE COMPANY,
a Massachusetts corporation

3574856

Property of Cook County Clerk's Office

70-83-982D20

Description affects pp 1751 & 1254752
15158501 # 110 which affects pp 1751 & 1254752

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

0 3 5 7 4 3 5 6

TABLE OF CONTENTS

	<u>Page</u>
RECITALS.....	1
GRANTING CLAUSES.....	2
ARTICLE ONE - COVENANTS OF MORTGAGOR	
1.01 Performance under Note, Mortgage and Other Instruments.....	5
1.02 General Covenants and Representations.....	5
1.03 Compliance with Laws.....	6
1.04 Taxes and Other Charges.....	6
1.04.1 Taxes and Assessments.....	6
1.04.2 Taxes Affecting Lender's Interest.....	7
1.04.3 Tax Escrow.....	7
1.04.4 No Credit Against the Indebtedness Secured Hereby.....	8
1.05 Mechanic's and Other Liens.....	8
1.06 Insurance and Condemnation.....	9
1.06.1 Hazard Insurance.....	9
1.06.2 Other Insurance.....	9
1.06.3 Adjustment of Loss.....	10
1.06.4 Condemnation Awards.....	10
1.06.5 Repair; Proceeds of Casualty Insurance and Eminent Domain.....	11
1.06.6 Proceeds of Business Interruption and Rental Insurance.....	12
1.06.7 Renewal of Policies and Insurance Escrow....	13
1.07 Non-Impairment of Lender's Rights.....	13
1.08 Care of the Mortgaged Property.....	14
1.09 Transfer of the Mortgaged Property.....	14
1.10 Further Assurances.....	16
1.11 Security Agreement and Financing Statements.....	17
1.12 Assignment of Rents.....	19

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

0 3 5 7 4 0 5 6

Page

1.13	After-Acquired Property.....	20
1.14	Leases Affecting Mortgaged Property.....	20
1.15	Management of Mortgaged Property.....	21
1.16	Execution of Leases.....	22
1.17	Expenses.....	22
1.18	Lender's Performance of Mortgagor's Obligations.....	23
1.19	Payment of Superior Liens.....	24
1.20	Books and Records.....	24
1.21	Estoppel Affidavits.....	25
1.22	Use of the Mortgaged Property.....	25
1.23	Litigation Involving Mortgaged Property.....	25
1.24	Required Notices.....	26
1.25	Right of First Refusal on Future Financing.....	26
ARTICLE TWO - DEFAULTS		
2.01	Event of Default.....	28
ARTICLE THREE - REMEDIES		
3.01	Acceleration of Maturity.....	31
3.02	Lender's Power of Enforcement.....	31
3.03	Right of Partial Foreclosure.....	32
3.04	Lender's Right to Enter and Take Possession, Operate and Apply Income.....	32
3.05	Leases.....	34
3.06	Purchase by Lender.....	35
3.07	Application of Foreclosure Sale Proceeds.....	35
3.08	Application of Indebtedness Toward Purchase Price.....	35

357-1856

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

0 3 5 7 4 5 6

Page

3.09	Waiver of Appraisalment, Valuation, Stay, Extension and Redemption Laws.....	35
3.10	Receiver - Lender in Possession.....	36
3.11	Suits to Protect the Mortgaged Property.....	36
3.12	Proofs of Claim.....	36
3.13	Additional Remedies; Application of Monies by Lender.....	37
3.14	Delay or Omission.....	38
3.15	Waiver of Default.....	38
3.16	Discontinuance of Proceedings; Position of Parties Restored.....	38
3.17	Remedies Cumulative.....	38
3.18	Interest After Event of Default.....	39
 ARTICLE FOUR - MISCELLANEOUS PROVISIONS		
4.01	Heirs, Successors and Assigns Included in Parties.....	39
4.02	Notices.....	39
4.03	Table of Contents and Headings.....	40
4.04	Invalid Provisions.....	40
4.05	Changes.....	40
4.06	Governing Law.....	41
4.07	Future Advances.....	41
4.08	Release.....	41
4.09	Attorneys' Fees.....	41
4.10	Counterparts.....	41
4.11	Consent.....	41
4.12	Exculpation From Liability.....	41

3574856

UNOFFICIAL COPY

Property of Cook County Clerk's Office

MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE AND SECURITY AGREEMENT ("**Mortgage**"), made as of December 2, 1986, is made and executed by Amalgamated Trust and Savings Bank, not in its individual capacity but as trustee under a Trust Agreement dated May 1, 1970 and known as Trust No. 2167 ("**Mortgagor**"), having its principal office at 1 West Monroe Street, Chicago, Illinois 60603, in favor of SMA Life Assurance Company, a Delaware corporation, having an office at 440 Lincoln Street, Worcester, Massachusetts 01605 ("**Lender**").

RECITALS

I. Lunt Realty Associates, an Illinois general partnership ("**Beneficiary**") owns 100% of the beneficial interest in Mortgagor. The sole general partners of Beneficiary are Kaiser Investments, an Illinois limited partnership ("**Kaiser**"), and the Julius Lopin Revocable Trust, an Illinois trust (the "**Lopin Trust**") (the Lopin Trust and Kaiser are collectively referred to herein as the "**General Partners of Beneficiary**"). The sole general and limited partners of Kaiser are Messrs. Walter Kaiser and Jordan Kaiser (the "**Kaiser Partners**"). Beneficiary and Lender have entered into a commitment dated September 23, 1986 (the "**Loan Commitment**"), pursuant to which Lender has agreed, subject to the terms and conditions thereof, to make a loan to Mortgagor in an amount not to exceed SIX MILLION FIVE HUNDRED THOUSAND DOLLARS (\$6,500,000.00) (the "**Loan**").

II. The Loan is evidenced by that certain note of even date herewith executed by the Mortgagor in favor of Lender in the principal sum of SIX MILLION FIVE HUNDRED THOUSAND DOLLARS (\$6,500,000.00) (the "**Note**"), a form of which is attached hereto as Exhibit A. The terms and provisions of the Note are hereby incorporated, by reference, in this Mortgage. The payment of the Note is secured by: (a) this Mortgage; (b) an Assignment of Leases and Rents executed by Mortgagor and Beneficiary ("**Assignment of Leases and Rents**"); (c) a Security Agreement pertaining to personal property on the Mortgaged Property (hereinafter defined) (the "**Security Agreement**"); (d) a Collateral Assignment of Beneficial Interest with respect to Beneficiary's interest in Mortgagor (the "**Collateral ABI**"); and (e) the other Loan Instruments (hereinafter defined).

THIS INSTRUMENT PREPARED BY AND RETURN TO:

Teri Zenner Kleiman, Esq.
Goldberg, Kohn, Bell, Black,
Rosenbloom & Moritz, Ltd.
55 East Monroe Street
Chicago, Illinois 60603

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

0 3 5 7 4 8 5 6

GRANTING CLAUSES

In consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, to secure the payment of the indebtedness evidenced by the Note and the payment of all amounts due under and the performance and observance of all covenants, conditions and obligations contained in this Mortgage, the Note, the Loan Commitment, that certain Beneficiary's Indemnity Agreement of even date herewith between Beneficiary and Lender, any and all other mortgages, security agreements, assignments of leases and rents, other collateral assignments, guaranties, letters of credit and any other documents and instruments now or hereafter executed and delivered to Lender to evidence, secure or guarantee the Loan or otherwise in connection with the Loan and any and all renewals, extensions, amendments, modifications and replacements of this Mortgage, the Note, the Loan Commitment and any such other documents and instruments (this Mortgage, the Note, the Loan Commitment, the Security Agreement, the Assignment of Leases and Rents, the Collateral ABI, such other mortgages, security agreements, assignments of leases and rents, guaranties, letters of credit, documents and instruments and all renewals, extensions, amendments, modifications and replacements hereof and thereof being sometimes referred to collectively as the "Loan Instruments" and individually as a "Loan Instrument") and all other indebtedness or liabilities of Mortgagor to Lender, of every kind, nature and description, direct or indirect, absolute or contingent, now or hereafter owing and the performance and observance of all other covenants and obligations made in favor of Lender (all indebtedness, liabilities, covenants and obligations secured hereby being hereinafter sometimes referred to as "Borrower's Liabilities" which indebtedness, liabilities, covenants and obligations being secured hereby shall, in no event, exceed five times the aggregate face amount of the Note), Mortgagor does hereby convey, mortgage, assign, transfer, pledge and deliver to Lender the following described property subject to the terms and conditions herein:

(A) The approximately 482,232 square feet of land and improvements in two parcels bisected by a storm drainage ditch owned by Elk Grove Village, located at 1905-1945 Lunt Avenue, Elk Grove Village, Illinois, legally described in Exhibit B attached hereto (the "Land");

(B) All the buildings, structures, improvements and fixtures of every kind or nature now or hereafter situated on the Land, including but not limited to a fully-sprinklered one-story, and part two-story, masonry office/warehouse/industrial building containing 232,506 square feet of net rentable area, two enclosed truck dock areas, each with eight depressed ramp truck-level docks with levelators and overhead doors with paved on-site parking for 191 cars, and personalty and fixtures pertaining thereto and, to the extent not owned by tenants of the Mortgaged

3574856

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

0, 3 5 7 4 3 5 6

Property, all machinery, appliances, equipment, furniture and all other personal property of every kind or nature located in or on, or attached to, or used or intended to be used in connection with, or with the operation of, the Land, buildings, structures, improvements or fixtures now or hereafter located or to be located on the Land, or in connection with any construction being conducted or which may be conducted thereon, and all extensions, additions, improvements, substitutions and replacements to any of the foregoing (the "Improvements");

(C) All building materials and goods which are procured or to be procured for use on or in connection with the Improvements or the construction of additional Improvements, whether or not such materials and goods have been delivered to the Land (the "Materials");

(D) All plans, specifications, architectural renderings, drawings, licenses, permits, soil test reports, other reports of examinations or analyses of the Land or the Improvements, contracts for services to be rendered to Trustee, Beneficiary or otherwise in connection with the Improvements and all other property, contracts, reports, proposals and other materials now or hereafter existing in any way relating to the Land or the Improvements or the construction of additional Improvements;

(E) All easements, tenements, rights-of-way, vaults, gores of land, streets, ways, alleys, passages, sewer rights, water courses, water rights and powers and appurtenances in any way belonging, relating or appertaining to any of the Land or Improvements, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired (the "Appurtenances");

(F) (i) All judgments, insurance proceeds, awards of damages and settlements which may result from any damage to all or any portion of the Land, Improvements or Appurtenances or any part thereof or to any rights appurtenant thereto;

(ii) All compensation, awards, damages, claims, rights of action and proceeds of or on account of (a) any damage or taking, pursuant to the power of eminent domain, of the Land, Improvements, Appurtenances or Materials or any part thereof, (b) damage to all or any portion of the Land, Improvements or Appurtenances by reason of the taking, pursuant to the power of eminent domain, of all or any portion of the Land, Improvements, Appurtenances, Materials or of other property, or (c) the alteration of the grade of any street or highway on or about the Land, Improvements, Appurtenances, Materials or any part thereof; and, except as otherwise provided herein, Lender is hereby authorized to collect and receive said awards and proceeds and to give proper receipts and acquittances therefor and, except as

3571856

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

0 3 5 7 4 8 5 6

otherwise provided herein, to apply the same toward the payment of the indebtedness and other sums secured hereby;

(iii) All contract rights, general intangibles, actions and rights in action, including, without limitation, all rights to insurance proceeds and unearned premiums, arising from or relating to damage to the Land, Improvements, Appurtenances or Materials; and

(iv) All proceeds, products, replacements, additions, substitutions, renewals and accessions of and to the Land, Improvements, Appurtenances or Materials;

(G) All rents, issues, profits, income and other benefits now or hereafter arising from or in respect of the Land, Improvements or Appurtenances (the "Rents"); it being intended that this Granting Clause shall constitute an absolute and present assignment of the Rents, subject, however, to the conditional permission given to Mortgagor to collect and use the Rents as provided in this Mortgage and in the Assignment of Leases and Rents;

(H) Any and all leases, licenses and other occupancy agreements now or hereafter affecting the Land, Improvements, Appurtenances or Materials, together with all security therefor (including, without limitation, all security deposits) and guaranties thereof and all monies payable thereunder, and all books and records owned by Mortgagor, or either of them, which contain evidence of payments made under the leases and all security given therefor (collectively, the "Leases"), subject, however, to the conditional permission given in this Mortgage to Mortgagor to collect the Rents arising under the Leases as provided in this Mortgage and in the Assignment of Leases and Rents;

(I) Any and all rights of Mortgagor and Beneficiary under that certain License Agreement dated April 27, 1986, extended to August 1, 1996 (the "License Agreement") between Elk Grove Village and Mortgagor.

(J) Any and all after-acquired right, title or interest of Mortgagor in and to any of the property described in the preceding Granting Clauses; and

(K) The proceeds from the sale, transfer, pledge or other disposition of any or all of the property described in the preceding Granting Clauses.

All of the mortgaged property described in the Granting Clauses, together with all real and personal, tangible and intangible property pledged in, or to which a security interest attaches pursuant to, any of the Loan Instruments is sometimes

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

0 3 5 7 4 9 5 6

referred to collectively as the "**Mortgaged Property**". The Rents and Leases are pledged on a parity with the Land and Improvements and not secondarily.

ARTICLE ONE

COVENANTS OF MORTGAGOR

Mortgagor covenants and agrees with Lender as follows:

1.01 Performance under Note, Mortgage and Other Instruments. Mortgagor shall perform, observe and comply with or cause to be performed, observed and complied with in a complete and timely manner all provisions hereof and of the Note, every other Loan Instrument (including the Loan Commitment, which shall survive the closing of the Loan) and every instrument evidencing or securing Borrower's Liabilities and will promptly pay or cause to be paid to Lender when due the principal with interest thereon and all other sums required to be paid by Mortgagor pursuant to the Note, this Mortgage, every other Loan Instrument and every other instrument evidencing or securing Borrower's Liabilities.

1.02 General Covenants and Representations. Mortgagor covenants, warrants and represents that as of the date hereof and at all times thereafter during the term hereof: (a) Trustee is seized of an indefeasible estate in fee simple in that portion of the Mortgaged Property which is real property, and has good and absolute title to it and the balance of the Mortgaged Property free and clear of all liens, security interests, charges and encumbrances whatsoever except those described in Exhibit C, if any (the "**Permitted Encumbrances**"); (b) Mortgagor has good right, full power and lawful authority to mortgage and pledge the Mortgaged Property as provided herein and the execution, delivery and performance of this Mortgage, the Note and all other documents being executed in connection herewith have been duly authorized by all necessary action and do not: (i) require any consent or approval which has not been obtained; (ii) violate any provisions of any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award having applicability to Mortgagor; or (iii) result in a breach of, or constitute a default under, any indenture or loan agreement, mortgage, or any other agreement, lease or instrument to which Mortgagor, is a party or by which it, the Mortgaged Property or any of its other properties may be bound or affected; (c) upon the occurrence of an Event of Default, Lender may at all times peaceably and quietly enter upon, hold, occupy and enjoy the Mortgaged Property in accordance with the terms hereof; (d) Mortgagor will maintain and preserve the lien of this Mortgage as a first and paramount lien on the Mortgaged Property subject only to the Permitted Encumbrances (unless released by Lender) until Borrower's Liabilities have been paid in full; and (e) the statements made in the Recitals to this Mortgage are true and complete.

3574856

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

0 3 5 7 4 0 5 6

1.03 Compliance with Laws. Mortgagor covenants, warrants and represents that the Land and the Improvements and the use thereof presently comply with, and will during the full term of this Mortgage continue to comply with, all applicable restrictive covenants, zoning and subdivision ordinances and building codes, licenses, health and environmental laws and regulations (including, without limitation, statutes regarding oil, hazardous wastes or hazardous materials) and all other applicable laws, ordinances, rules and regulations. If any federal, state or other governmental body or any court issues any notice or order to the effect that the Mortgaged Property or any part thereof is not in compliance with any such covenant, ordinance, code, law or regulation, Mortgagor will promptly provide Lender with a copy of such notice or order and will immediately commence and diligently perform all such actions as are necessary to comply therewith or otherwise correct such non-compliance. Mortgagor shall not, without the prior written consent of Lender, petition for or otherwise seek any change in the zoning ordinances or other public or private restrictions applicable to the Mortgaged Property on the date hereof.

1.04 Taxes and Other Charges.

1.04.1 Taxes and Assessments. Mortgagor shall pay promptly when due all taxes, assessments, rates, dues, charges, fees, levies, fines, impositions, liabilities, obligations, liens and encumbrances of every kind and nature whatsoever now or hereafter imposed, levied or assessed upon or against the Mortgaged Property or any part thereof, or upon or against this Mortgage or Borrower's Liabilities or upon or against the interest of Lender in the Mortgaged Property, as well as all taxes, assessments and other governmental charges levied and imposed by the United States of America or any state, county, municipality or other taxing authority upon or in respect of the Mortgaged Property or any part thereof; provided, however, that unless compliance with applicable laws requires that taxes, assessments or other charges must be paid as a condition to protesting or contesting the amount thereof, Mortgagor may in good faith, by appropriate proceedings commenced within ninety (90) days of the due date of such amounts and thereafter diligently pursued, contest the validity, applicability or amount of any asserted tax, assessment or other charge and pending such contest Mortgagor shall not be deemed in default hereunder if on or before the due date of the asserted tax or assessment, Mortgagor shall deposit with Lender a bond or other security satisfactory to Lender in the amount of one hundred fifty percent (150%) of the amount of such tax or assessment. Mortgagor shall pay the disputed or contested tax, assessment or other charge and all interest and penalties due in respect thereof on or before

3571855

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

0 3 5 7 4 0 5 0

the date any adjudication of the validity or amount thereof becomes final and in any event no less than sixty (60) days prior to any forfeiture or sale of the Mortgaged Property by reason of such non-payment. Upon Lender's request, Mortgagor will promptly file, if it has not theretofore filed, such petition, application or other instrument as is necessary to cause the Land and Improvements to be taxed as a separate parcel or parcels which include no property not a part of the Mortgaged Property.

1.04.2 Taxes Affecting Lender's Interest. If any state, federal, municipal or other governmental law, order, rule or regulation, which becomes effective subsequent to the date hereof, in any manner changes or modifies existing laws governing the taxation of mortgages or debts secured by mortgages, or the manner of collecting taxes, so as to impose on Lender a tax by reason of its ownership of any or all of the Loan Instruments or measured by the principal amount of the Note, or if any such law, order, rule or regulation requires or has the practical effect of requiring Lender to pay any portion of the real estate taxes levied in respect of the Mortgaged Property to pay any tax levied in whole or in part in substitution for real estate taxes or otherwise affects materially and adversely the rights of Lender in respect of the Note, this Mortgage or the other Loan Instruments, Borrower's Liabilities and all interest accrued thereon shall, upon thirty (30) days' notice, become due and payable forthwith at the option of Lender, without the payment of a Premium (as defined in the Note) whether or not there shall have occurred an Event of Default, provided, however, that, if, in the opinion of counsel satisfactory to Lender, Mortgagor may, without violating or causing a violation of such law, order, rule or regulation, pay such taxes or other sums as are necessary to eliminate such adverse effect upon the rights of Lender and does pay such taxes or other sums when due for so long as any of Borrower's Liabilities shall remain unpaid, Lender may not elect to declare due Borrower's Liabilities by reason of the provisions of this Paragraph 1.04.2.

1.04.3 Tax Escrow. Mortgagor shall, in order to secure the performance and discharge of Mortgagor's obligations under this Paragraph 1.04, but not in lieu of such obligations, deposit with Lender an amount equal to one-twelfth (1/12) of the next maturing payment of (a) annual ad valorem taxes, assessments and charges of the nature described in Paragraph 1.04.1, and (b) such taxes affecting Lender's interest as Mortgagor has elected to pay in accordance with the provisions of Paragraph 1.04.2, all as estimated by Lender, for each month that has elapsed since the last date to which such taxes, assessments and charges were paid and thereafter deposit with Lender in monthly installments the greater of one-twelfth (1/12) of said next maturing annual payment or sufficient funds as estimated from time to time by Lender, to permit Lender to pay such taxes, assessments and charges at least thirty (30) days prior to the date or dates on

3571856

UNOFFICIAL COPY

Property of Cook County Clerk's Office

which they shall become delinquent. The taxes, assessments and charges for purposes of this Paragraph 1.04.3 shall, if Lender so elects, include, without limitation, water and sewer rents. Mortgagor shall procure and deliver to Lender when issued all statements or bills for such obligations. Upon demand by Lender, Mortgagor shall deliver to Lender such additional monies as are required to satisfy any deficiencies in the amounts necessary to enable Lender to pay such taxes, assessments and similar charges thirty (30) days prior to the date they become delinquent. Lender shall pay such taxes, assessments and other charges as they become due to the extent of the funds on deposit with Lender from time to time and provided Mortgagor has delivered to Lender the statements or bills therefor. In making any such payments, Lender shall be entitled to rely on any bill issued in respect of any such taxes, assessments or charges without inquiry into the validity or amount thereof and whether delivered to Lender by Mortgagor or otherwise obtained by Lender. Any deposits received pursuant to this Paragraph 1.04.3 shall not be, nor be deemed to be, trust funds, but may be commingled with the general funds of Lender and Lender shall have no obligation to pay interest on amounts deposited with Lender pursuant to this Paragraph 1.04.3. If any Event of Default occurs any part or all of the amounts then on deposit or thereafter deposited with Lender under this Paragraph 1.04.3 may at Lender's option be applied to payment of Borrower's Liabilities in such order as Lender may determine and, to the extent any such amounts are so applied, Mortgagor shall receive credit against Borrower's Liabilities therefor.

1.04.4 No Credit Against the Indebtedness Secured Hereby. Mortgagor shall not claim, demand or be entitled to receive any credit against the principal or interest payable under the terms of the Note or on any of Borrower's Liabilities for any of the taxes, assessments or similar impositions assessed against the Mortgaged Property or any part thereof or that are applicable to Borrower's Liabilities or to Lender's interest in the Mortgaged Property.

1.05 Mechanic's and Other Liens. Mortgagor shall not permit or suffer any mechanic's, laborer's, materialman's, statutory or other lien or encumbrance (other than any lien for taxes and assessments not yet due) to be created upon or against the Mortgaged Property, provided, however, that Mortgagor may in good faith, by appropriate proceeding, contest the validity, applicability or amount of any asserted lien and, pending such contest, Mortgagor shall not be deemed to be in default hereunder if Mortgagor shall first deposit with Lender a bond or other security satisfactory to Lender in the amount of one hundred fifty percent (150%) of the amount of such lien. Mortgagor shall pay the disputed amount and all interest and penalties due in respect thereof on or before the date any adjudication of the validity or amount thereof becomes final and all stays of execution pending appeal or otherwise shall have expired and, in

357-1856

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Q 3 5 7 4 3 5 6

any event, no less than sixty (60) days prior to any foreclosure sale of the Mortgaged Property or the exercise of any other remedy by such claimant against the Mortgaged Property.

1.06 Insurance and Condemnation.

1.06.1 Hazard Insurance. Mortgagor shall, at its sole expense, obtain for, deliver to, assign to and maintain for the benefit of Lender, until Borrower's Liabilities are paid in full, policies of hazard insurance in an amount which shall be not less than one hundred percent (100%) of the full insurable replacement cost (as such replacement cost is approved by Lender) of the Mortgaged Property (other than the Land) insuring on a replacement cost basis the Mortgaged Property and the Tangible Goods (as defined in the Security Agreement) against loss or damage on an "All Risks" form, such insurable hazards, casualties and contingencies as Lender may require, including without limitation fire, windstorm, rainstorm, vandalism, earthquake and, if all or any part of the Mortgaged Property shall at any time be located within an area identified by the government of the United States or any agency thereof as having special flood hazards and for which flood insurance is available, flood. Mortgagor shall pay promptly when due any premiums on such insurance policies and on any renewals thereof. The form and substance of such policies and any endorsements thereto and the companies issuing them shall be acceptable to Lender. If any such policy shall contain a co-insurance clause, the policy or an endorsement thereto shall state the stipulated value of the insured property and the amount of insurance shall exceed the product of the co-insurance clause percentage times said stipulated value. All such policies and renewals thereof shall be held by Lender and shall contain a non-contributory standard mortgagee's endorsement making losses payable to Lender. No additional parties shall appear in the mortgagee clause without Lender's prior written consent. In the event of loss, Mortgagor will give immediate written notice to Lender and Lender may make proof of loss. Lender may make proof of loss if not made promptly by Mortgagor (for which purpose Mortgagor hereby irrevocably appoints Lender as its attorney-in-fact). In the event of the foreclosure of this Mortgage or any other transfer of title to the Mortgaged Property in full or partial satisfaction of Borrower's Liabilities, all right, title and interest of Mortgagor in and to all insurance policies and renewals thereof then in force shall pass to the purchaser or grantee. All such policies shall provide that they shall not be modified, cancelled or terminated without at least twenty (20) days' prior written notice to Lender from the insurer.

1.06.2 Other Insurance. Mortgagor shall, at its sole expense, obtain for, deliver to, assign to and maintain for the benefit of, Lender, until Borrower's Liabilities are paid in full, (i) a general liability insurance policy of not less than \$10,000,000, (ii) a loss of rentals and/or business interruption

3571856

UNOFFICIAL COPY

Property of Cook County Clerk's Office

insurance policy (in an amount equal to not less than one year's gross rent or gross income for a fully leased or fully operational building) and (iii) such other insurance policies relating to the Mortgaged Property and the Tangible Property and the use and operation thereof, in such amounts as may be reasonably required by Lender and with such companies and in such form as may be acceptable to Lender. Lender, by written demand upon Mortgagor, may require such policies to contain an endorsement, in form satisfactory to Lender, naming Lender as an additional insured thereunder. Mortgagor shall maintain no other policies of insurance other than those which are required by the terms of Paragraphs 1.06.1 and 1.06.2.

1.06.3 Adjustment of Loss. Lender is hereby authorized and empowered, at its option, to adjust or compromise any loss under any insurance policies covering or relating to the Mortgaged Property or the Tangible Goods and to collect and receive the proceeds from any such policy or policies (and deposit such proceeds as provided in Paragraph 1.06.5). Mortgagor hereby irrevocably appoints Mortgagee as its attorney-in-fact for the purposes set forth in the preceding sentence. Each insurance company is hereby authorized and directed to make payment of one hundred percent (100%) of all such losses directly to Lender alone, and in no case to Mortgagor and Lender jointly. After deducting from such insurance proceeds any expenses incurred by Mortgagee in the collection and settlement thereof, including without limitation attorneys' and adjusters' fees and charges, Lender shall apply the net proceeds as provided in Paragraph 1.06.5. Lender shall not be responsible for any failure to collect any insurance proceeds due under the terms of any policy regardless of the cause of such failure.

1.06.4 Condemnation Awards. Lender shall be entitled to all compensation, awards, damages, claims, rights of action and proceeds of, or on account of, (i) any damage or taking, pursuant to the power of eminent domain, of the Mortgaged Property or any part thereof, (ii) damage to the Mortgaged Property by reason of the taking, pursuant to the power of eminent domain, of other property or of a portion of the Mortgaged Property, or (iii) the alteration of the grade of any street or highway on or about the Mortgaged Property. Lender is hereby authorized, at its option, to commence, appeal in and prosecute in its own or Mortgagor's name any action or proceeding relating to any such compensation, awards, damages, claims, rights of action and proceeds and to settle or compromise any claim in connection therewith. Mortgagor hereby irrevocably appoints Lender as its attorney-in-fact for the purposes set forth in the preceding sentence. Lender, after deducting from such compensation, awards, damages, claims, rights of action and proceeds, all its expenses, including attorneys' fees, may apply such net proceeds (except as otherwise provided in Paragraph 1.06.5 of this Mortgage) to payment of Borrower's Liabilities in

3571856

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

0 3 5 7 4 5 5 0

such order and manner as Lender may elect. Mortgagor agrees to execute such further assignments of any compensation awards, damages, claims, rights of action and proceeds as Lender may require.

1.06.5 **Repair; Proceeds of Casualty Insurance and Eminent Domain.** If all or any part of the Mortgaged Property shall be damaged or destroyed by fire or other casualty or shall be damaged or taken through the exercise of the power of eminent domain or other cause described in Paragraph 1.06.4 and Lender elects, in its sole discretion, to permit Mortgagor to use such proceeds, award or other compensation, or any portion thereof, to pay the cost of restoration or repair of the Mortgaged Property, Mortgagor shall promptly and with all due diligence restore and repair the Mortgaged Property whether or not the proceeds, award or other compensation are sufficient to pay the cost of such restoration or repair. At Lender's election, to be exercised by written notice to Mortgagor within thirty (30) days following Lender's unrestricted receipt in cash or the equivalent thereof of said proceeds, award or other compensation, the entire amount of said proceeds, award or compensation shall either (i) be applied to Borrower's Liabilities in such order and manner as Lender may determine, or (ii) be made available to Mortgagor to finance the cost of restoration or repair, on such terms and conditions as Lender may, in its sole discretion, impose, including those set forth in this Paragraph 1.06.5 and subject to the approval by Lender of the plans and specifications for such restoration and repair, and subject to the rights of Sperry (as defined below) to receive excess proceeds pursuant to Section 7.3 of the Sperry Lease Agreement (as defined below), with any excess to be applied to Borrower's Liabilities (as provided in clause (i) hereof) or (iii) any combination of both of the above; provided, however, that in the event, and to the extent, that Mortgagor is required to apply such proceeds, award or compensation to repair and restore the Mortgaged Property under the terms of that certain Lease Agreement dated May 6, 1976 (the "**Sperry Lease Agreement**") between Sperry Rand Corporation (the Sperry Rand Corporation and its successors, including its corporate successor from a merger with Burroughs Corp. are referred to herein as "**Sperry**") and Mortgagor, and that certain Lease Extension Agreement dated May 1, 1986 (the "**Lease Extension**") between Sperry and Mortgagor (the Sperry Lease Agreement and Lease Extension are collectively referred to herein as the "**Sperry Lease**"), and provided further, that the Sperry Lease is in full force and effect, Sperry is not in default thereunder and Sperry does not exercise its right, if any, to cancel the Sperry Lease, Lender shall elect to follow the procedure set forth in clause (ii) of this sentence. If the amount of proceeds to be made available to Mortgagor pursuant to this Paragraph 1.06.5 is less than the cost of the restoration or repair as estimated by Lender at any time prior to completion thereof, Mortgagor shall cause to be deposited with Lender the amount of such deficiency

3571856

UNOFFICIAL COPY

Property of Cook County Clerk's Office

within thirty (30) days of Lender's written request therefor (but in no event later than the commencement of the work) and Mortgagor's deposited funds shall be disbursed prior to any such insurance proceeds. If Mortgagor is required to deposit funds under this Paragraph 1.06.5, the deposit of such funds shall be a condition precedent to Mortgagee's obligation to disburse any insurance proceeds held by Lender hereunder. The amount of proceeds, award or compensation which is to be made available to Mortgagor, together with any deposits made by Mortgagor hereunder, shall be held by Lender to be disbursed from time to time to pay the cost of repair or restoration either, at Lender's option, to Mortgagor or directly to contractors, subcontractors, material suppliers and other persons entitled to payment in accordance with and subject to such conditions to disbursement as Lender may impose to assure that the work is fully completed in a good and workmanlike manner, in accordance with the plans and specifications approved by Mortgagee, and paid for and that no liens or claims arise by reason thereof. Lender may commingle any such funds held by it with its other general funds. Lender shall not be obligated to pay interest in respect of any such funds held by it nor shall Mortgagor be entitled to a credit against any of Borrower's Liabilities except and to the extent the funds are applied thereto pursuant to this Paragraph 1.06.5. Notwithstanding any other provision of this Paragraph 1.06.5, if there shall have occurred an Event of Default and such Event of Default has not been cured at the time of said casualty, taking or other event or if an Event of Default occurs thereafter, Lender shall have the right to immediately apply all insurance proceeds, awards or compensation to the payment of Borrower's Liabilities in such order as Lender may determine. Lender shall have the right at all times to apply such net proceeds to the cure of any Event of Default or the performance of any obligations of Mortgagor, or either one of them, under the Loan Instruments.

1.06.6 Proceeds of Business Interruption and Rental Insurance. In the event Lender has elected to permit Mortgagor to use the proceeds, award or other compensation from a casualty to pay the cost of the restoration and repair of the Mortgaged Property, the net proceeds of business interruption and rental insurance payable with respect to such casualty shall be applied to the payments of Borrower's Liabilities next coming due and to discharge such accrued and to be accrued expenses of operation and maintenance of the Mortgaged Property as Lender may in its sole discretion approve, subject to such controls as Lender may deem necessary. In all other events, the net proceeds of business interruption and rental insurance payable with respect to such casualty shall be applied to Borrower's Liabilities in such order and manner as Lender may elect. Notwithstanding any other provision of Paragraph 1.06.5 or this Paragraph 1.06.6, if there shall have occurred an Event of Default and such Event of Default has not been cured at the time of said casualty, taking or other event or if an Event of Default occurs thereafter,

3574856

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

U 3 5 7 4 5 6

Lender shall have the right to immediately apply all proceeds, awards or compensation payable pursuant to Paragraphs 1.06.5 or 1.06.6 hereof to the payment of Borrower's Liabilities in such order and manner as Lender may determine. Lender shall have the right at all times to apply such net proceeds to the cure of any Event of Default or the performance of any obligations of Mortgagor or under the Loan Instruments.

1.06.7 Renewal of Policies and Insurance Escrow. At least twenty (20) days prior to the expiration date of any policy evidencing insurance required by this Mortgage, Mortgagor shall deliver to Lender a renewal thereof satisfactory to Lender or substitution therefor, together with receipts or other evidence of the payment of any premiums then due on such renewal policy or substitute policy. Mortgagor shall, in order to secure the performance and discharge of Mortgagor's obligations under this Paragraph 1.06.7, but not in lieu of such obligations, deposit with Lender an amount equal to one-twelfth (1/12) of any premiums due on any such renewal policy or substitute policy, as estimated by Lender, for each month that has elapsed during the one year period prior to the expiration of the policy presently in effect and thereafter deposit with Lender in monthly installments the greater of one-twelfth (1/12) of the annual premiums due on said policies or sufficient funds, as estimated from time to time by Lender, to permit Lender to pay such premiums at least thirty (30) days prior to the expiration of the policy presently in effect. Any deposits received pursuant to this Paragraph 1.06.7 shall not be, nor be deemed to be, trust funds, but may be commingled with the general funds of Lender and Lender shall have no obligation to pay interest on amounts deposited with Lender pursuant to this Paragraph 1.06.7. If any Event of Default occurs any part or all of the amounts then on deposit or thereafter deposited with Lender under this Paragraph 1.06.7 may at Lender's option be applied to payment of Borrower's Liabilities in such order as Lender may determine and, to the extent any such amounts are so applied, Mortgagor shall receive credit against Borrower's Liabilities therefor.

1.07 Non-Impairment of Lender's Rights. Nothing contained in this Mortgage shall be deemed to limit or otherwise affect any right or remedy of Lender under any provision of this Mortgage or of any statute or rule of law to pay any amount required to be paid by Mortgagor under Paragraphs 1.04, 1.05 and 1.06. Upon Mortgagor's failure to pay the same, Lender may pay any of said amounts. Mortgagor shall pay to Lender on demand the amount so paid by Lender together with interest at the Default Rate (as defined in the Note), and the amount so paid by Lender shall be added to Borrower's Liabilities. The provisions of Paragraph 1.04.3 are solely for the added protection of Lender and entail no responsibility on Lender's part beyond the allowing of due credit as specifically provided therein. Upon assignment of this Mortgage, any funds on hand shall be turned over to the

3571856

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

0 3 5 7 4 8 5 6

assignee and, provided the assignee shall assume Lender's responsibilities with respect to such funds, any responsibility of Lender with respect to such funds shall terminate.

1.08 Care of the Mortgaged Property.

(a) Mortgagor shall preserve and maintain the Mortgaged Property in good and first class condition and repair. Mortgagor shall not, without the prior written consent of Lender, permit, commit or suffer any waste, impairment or deterioration of the Mortgaged Property or of any part thereof, and will not take any action which will increase the risk of fire or other hazard to the Mortgaged Property or to any part thereof.

(b) Except as otherwise explicitly provided in this Mortgage or in the Sperry Lease, no part of the Mortgaged Property shall be removed, demolished or altered in any material manner without the prior written consent of Lender.

1.09 Transfer of the Mortgaged Property.

(a) For the purpose of protecting Lender's security, Mortgagor shall not permit or suffer to occur any sale, assignment, conveyance, mortgage, lease (other than leases made in accordance with the provisions of this Mortgage), pledge, encumbrance or other transfer of, or the granting of any option in, or any contract for any of the foregoing (on an installment basis or otherwise) pertaining to:

(i) the Mortgaged Property, any part thereof, or any interest therein;

(ii) the beneficial interest in Mortgagor or in any other trust holding title to the Mortgaged Property, any part thereof, or any interest therein;

(iii) any general or limited partnership interest in Beneficiary, or the creation of additional general or limited partnership interests in Beneficiary;

(iv) any general or limited partnership interest in Kaiser or the issuance of any additional partnership interests in Kaiser; or

(v) any interest in the Lopin Trust or the creation of additional interests in the Lopin Trust,

whether by operation of law or otherwise, without the prior written consent of Lender having been obtained (1) to such sale, assignment, conveyance, mortgage, lease, option, pledge, encumbrance or other transfer and (2) to the form and substance of any instrument evidencing, securing or contracting for any such sale,

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

0 3 5 7 4 3 5 6

assignment, conveyance, mortgage, lease, option, pledge, encumbrance or other transfer. The withholding of consent under this covenant may be at the sole discretion of Lender. If Lender shall so consent, such transferee shall execute and deliver to Lender an instrument in form and substance satisfactory to Lender in which such transferee shall assume liability for all Borrower's Liabilities. Mortgagor shall not, without the prior written consent of Lender, further assign or permit to be assigned the rents from the Mortgaged Property, and any such assignment without the prior express written consent of Lender shall be null and void. Except as Lender may have requested, Mortgagor shall not permit any interest in any lease of the Mortgaged Property to be subordinated to any encumbrance on the Mortgaged Property other than the Loan Instruments and any such subordination shall be null and void. Mortgagor agrees that in the event the ownership of the Mortgaged Property, any interest therein or any part thereof becomes vested in a person other than Mortgagor, Mortgagee may, without notice to Mortgagor, deal in any way with such successor or successors in interest with reference to this Mortgage, the Note, the other Loan Instruments and Borrower's Liabilities without in any way vitiating or discharging Mortgagor's liability hereunder or Borrower's Liabilities. No sale of the Mortgaged Property, no forbearance to any person with respect to this Mortgage, and no extension to any person of the time for payment of the Note or any other Borrower's Liabilities given by Lender shall operate to release, discharge, modify, change or affect the liability of Mortgagor, either in whole or in part, except to the extent specifically agreed in writing by Lender. Without limitation of the foregoing, in any event in which the written consent of Lender is required in this Paragraph 1.09(a), Lender may condition its consent upon any combination of (i) the payment of compensation to be determined by Lender, (ii) the increase of the interest rate payable under the Note, (iii) the shortening of maturity of the Note, and (iv) other modifications of the terms of the Note or the other Loan Instruments. Any consent by Lender or a waiver of an Event of Default under Paragraph 2.01(i) below shall not constitute a consent to, or waiver of, any right, remedy or power of Lender upon a subsequent Event of Default under Paragraph 2.01(i).

(b) Notwithstanding the foregoing, and provided that (i) no Event of Default has occurred and is then existing under any of the Loan Instruments, (ii) the Kaiser Partners, so long as they both shall be living, or their widows or descendants, if one or both of the Kaiser Partners shall be deceased, shall at all times directly or indirectly, collectively control, either for their own accounts or as fiduciaries for an Immediate Family Member (as defined below), not less than fifty percent (50%) of the partnership interests in Beneficiary, and Beneficiary shall own one hundred percent (100%) of the Beneficial interest in Mortgagor, (iii) Mortgagor shall deliver written notice to Lender of the transfer not later than thirty (30) days after such

3574856

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

0 3 5 7 4 0 5 6

transfer, which notice includes all information necessary to demonstrate compliance with this Paragraph 1.09(b), and (iv) Mortgagor shall promptly deliver to Lender, upon Lender's request, a statement indicating all direct and indirect ownership of Mortgagor, Beneficiary and the General Partners of Beneficiary, Lender hereby approves in advance any transfer of partnership interests of Beneficiary or Kaiser, or any transfer of interests in the Lopin Trust (collectively the "Permitted Transfers"), to one or more of the following persons and entities (the "Permitted Transferees"): either of the Kaiser Partners, Mr. Julius Lopin (the Kaiser Partners and Mr. Julius Lopin are collectively referred to herein as the "Parties"), Kaiser, any of the siblings, spouses or descendants of any of the Parties (an "Immediate Family Member") or any trust established for the sole benefit of one or more of the Parties or Immediate Family Members.

(c) Without limitation of the foregoing, (i) in any event in which Lender's consent is requested in accordance with the terms of this Paragraph 1.09, Mortgagor shall pay all expenses incurred by Lender, including attorneys' fees, in connection with the processing of such request, and (ii) the consent of Lender to any transfer of the Mortgaged Property shall not operate to release, discharge, modify, change or affect the liability of Mortgagor, either in whole or in part.

1.10 Further Assurances. At any time and from time to time, upon Lender's request, Mortgagor shall make, execute and deliver, or cause to be made, executed and delivered, to Mortgagee, and where appropriate shall cause to be recorded, registered or filed, and from time to time thereafter to be re-recorded, re-registered and refiled at such time and in such offices and places as shall be deemed desirable by Lender, any and all such further mortgages, security agreements, financing statements, instruments of further assurances, certificates and other documents as Lender may consider necessary or desirable in order to effectuate or perfect, or to continue and preserve the obligations under, the Note, this Mortgage, any other Loan Instrument and any instrument evidencing or securing Borrower's Liabilities, and the lien of this Mortgage as a lien upon all of the Mortgaged Property, whether now owned or hereafter acquired by Mortgagor, and unto all and every person or persons deriving any estate, right, title or interest under this Mortgage. Upon any failure by Mortgagor to do so, Lender may make, execute, record, register, file, re-record, re-register or re-file any and all such mortgages, instruments, certificates and documents for and in the name of Mortgagor, and Mortgagor hereby irrevocably appoints Lender the agent and attorney-in-fact of Mortgagor to do so.

3571855

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

0 3 5 7 4 0 5 6

1.11 Security Agreement and Financing Statements.

(a) Mortgagor (as debtor) hereby grants to Mortgagee (as creditor and secured party) a security interest under the Uniform Commercial Code in all fixtures, machinery, appliances, equipment, furniture and personal property of every nature whatsoever constituting part of the Mortgaged Property and proceeds therefrom. Mortgagor shall execute any and all documents, including without limitation financing statements pursuant to the Uniform Commercial Code, as Lender may request to preserve, maintain and perfect the priority of the first lien and security interest created hereby on property which may be deemed personal property or fixtures, and shall pay to Lender on demand any expenses incurred by Lender in connection with the preparation, execution and filing of any such documents. Mortgagor hereby authorizes and empowers Lender and irrevocably appoints Lender the agent and attorney-in-fact of Mortgagor to execute and file, on Mortgagor's behalf, all financing statements and refilings and continuations thereof as Lender deems necessary or advisable to create, preserve and protect such lien. When and if Mortgagor and Lender shall respectively become the debtor and secured party in any Uniform Commercial Code financing statement affecting the Mortgaged Property (or Lender takes possession of personal property delivered by Mortgagor where possession is the means of perfection of the security interest), then, at Lender's sole election, this Mortgage shall be deemed a security agreement as defined in such Uniform Commercial Code, and the remedies for any violation of the covenants, terms and conditions of the agreements herein contained shall be as prescribed herein or by general law, or, as to such part of the security which is also reflected in such financing statement, by the specific statutory consequences now or hereafter enacted and specified in the Uniform Commercial Code.

(b) Without limitation of the foregoing, if an Event of Default occurs, Lender shall be entitled immediately to exercise all remedies available to it under the Uniform Commercial Code and this Paragraph 1.11. Mortgagor shall, in such event and if Lender so requests, assemble the tangible personal property at Mortgagor's expense, at a convenient place designated by Lender. Mortgagor shall pay all expenses incurred by Lender in the collection of such indebtedness, including attorneys' fees and legal expenses, and in the repair of any real estate or other property to which any of the tangible personal property may be affixed. If any notification of intended disposition of any of the personal property is required by law, such notification shall be deemed reasonable and proper if given at least ten (10) days before such disposition. Any proceeds of the disposition of any of the personal property may be applied by Lender to the payment of the expenses of retaking, holding, preparing for sale and selling the personal property, including attorneys' fees and legal expenses, and any balance of such proceeds may be applied

3571856

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

0 3 5 7 4 6 5 6

by Lender toward the payment of such of Borrower's Liabilities, and in such order of application, as Lender may from time to time elect. If an Event of Default occurs, Lender shall have the right to exercise and shall automatically succeed to all rights of Mortgagor with respect to intangible personal property subject to the security interest granted herein. Any party to any contract subject to the security interest granted herein shall be entitled to rely on the rights of Lender without the necessity of any further notice or action by Trustee or Beneficiary. Lender shall not by reason of this Mortgage or the exercise of any right granted hereby be obligated to perform any obligation of Mortgagor with respect to any portion of the personal property nor shall Lender be responsible for any act committed by the Mortgagor, or any breach or failure to perform by the Mortgagor with respect to any portion of the personal property.

(c) Mortgagor and Lender agree that the filing of a financing statement in the records normally having to do with personal property shall never be construed as in any way derogating from or impairing the express declaration and intention of the parties hereto hereinabove stated, that everything used in connection with the production of income from the Mortgaged Property and/or adapted for use therein and/or which is described or reflected in this mortgage is, and at all times and for all purposes and in all proceedings, legal or equitable, shall be regarded as part of the real estate encumbered by this Mortgage irrespective of whether (i) any such item is physically attached to the Land or Improvements, (ii) serial numbers are used for the better identification of certain equipment items capable of being thus identified in a recital contained herein or in any list filed with Lender, or (iii) any such item is referred to or reflected in any such financing statement so filed at any time. Similarly, the mention in any such financing statement of (1) rights in or to the proceeds of any fire and/or hazard insurance policy, or (2) any award in eminent domain proceedings for a taking or for loss of value, or (3) Mortgagor's interest as lessor in any present or future lease or rights to income growing out of the use and/or occupancy of the Mortgaged Property, whether pursuant to lease or otherwise, shall never be construed as in any way altering any of the rights of Lender as determined by this instrument or adversely affecting the priority of Lender's lien granted hereby or by any other recorded document. Any such mention in any such financing statement is declared to be for the protection of Lender in the event any court or judge shall at any time hold with respect to clauses (1), (2) or (3) above, that notice of Lender's priority of interest, to be effective against a particular class of persons, including, but not limited to, the federal government and any subdivisions or entity of the federal government, must be filed in the Uniform Commercial Code records.

3571856

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

0 3 5 7 4 6 5 6

1.12 Assignment of Rents.

(a) The assignment of rents, income and other benefits contained in Paragraph (G) of the Granting Clauses of this Mortgage shall be fully operative without any further action on the part of either party, and, specifically, Lender shall be entitled, at its option, upon the occurrence of an Event of Default hereunder, to all rents, income and other benefits from the property described in Paragraphs (A), (B) and (E) of the Granting Clauses, whether or not Lender takes possession of such property. Mortgagor hereby further grants to Mortgagee the right effective upon the occurrence of an Event of Default at Lender's option, (i) to enter upon and take possession of the Mortgaged Property for the purpose of collecting the rents, income and other benefits, (ii) to dispossess by the usual summary proceedings any tenant defaulting in the payment thereof to Lender, (iii) to lease the Mortgaged Property or any part thereof, and (iv) to apply the rents, income and other benefits, after payment of all necessary charges and expenses, on account of Borrower's Liabilities. Such assignment and grant shall continue in effect until Borrower's Liabilities are paid in full, the execution of this Mortgage constituting and evidencing the irrevocable consent of Mortgagor to the entry upon and taking possession of the Mortgaged Property by Lender pursuant to such grant, whether or not foreclosure proceedings have been instituted. Neither the exercise of any rights under this paragraph by Lender nor the application of any such rents, income or other benefits to payment of Borrower's Liabilities shall cure or waive any Event of Default or notice provided for hereunder, or invalidate any act done pursuant hereto or pursuant to any such notice, but shall be cumulative of all other rights and remedies. Trustee and Beneficiary have executed and delivered to Lender the Assignment of Leases and Rents, and, to the extent that the provisions of this Paragraph 1.12 or Paragraph 1.14 are inconsistent with the provisions of said Assignment of Leases and Rents, the provisions of said Assignment of Leases and Rents shall control. Notwithstanding the foregoing, so long as no Event of Default has occurred and is continuing, Mortgagor shall have the right and authority to continue to collect the rents, income and other benefits from said property as they become due and payable but not more than thirty (30) days prior to the due date thereof. The existence or exercise of such right of Mortgagor to collect said rents, income and other benefits shall not operate to subordinate this assignment to any subsequent assignment of said rents, income or other benefits, in whole or in part, by Mortgagor, and any such subsequent assignment by Mortgagor shall be subject to the rights of Lender hereunder.

(b) Mortgagor shall not permit any rent under any lease of the Mortgaged Property to be collected more than thirty (30) days in advance of the due date thereof and, upon any receiver, Lender, anyone claiming by, through or under Lender or

3571856

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

U 3 5 7 4 3 5 6

any purchaser at a foreclosure sale coming into possession of the Mortgaged Property, no tenant shall be given credit for any rent paid more than thirty (30) days in advance of the due date thereof. Mortgagor shall act promptly to enforce all available remedies against any delinquent lessee so as to protect the interest of the lessor under the leases and to preserve the value of the Mortgaged Property.

1.13 **After-Acquired Property.** To the extent permitted by, and subject to, applicable law, the lien of this Mortgage, including without limitation the security interest created under Paragraph 1.11, shall automatically attach, without further act, to all property hereafter acquired by Mortgagor located in or on, or attached to, or used or intended to be used in connection with, or with the operation of, the Mortgaged Property or any part thereof. As to such property, Mortgagor covenants and agrees that it shall have exclusive rights and full title thereto, free of all security interests, liens, leases, and encumbrances, other than the security interest granted herein and the lien of the other Loan Instruments.

1.14 **Leases Affecting Mortgaged Property.**

(a) Mortgagor shall comply with and perform in a complete and timely manner all of its obligations as landlord under all leases affecting the Mortgaged Property or any part thereof. Mortgagor shall give notice to Lender of any default by the lessor under any lease affecting the Mortgaged Property promptly upon the occurrence of such default, but, in any event, in such time to afford Lender an opportunity to cure any such default prior to the lessee having any right to terminate the lease. Each of the leases entered into after the date hereof shall contain a provision requiring the lessee thereunder (i) to notify Lender of any default by lessor and to grant Lender an opportunity for a reasonable time after such notice to cure such default prior to any right accruing to such lessee to terminate such lease, (ii) not to require Lender to repay to such lessee any security deposit which has not been delivered to Lender and (iii) to release Lender from any liability which such lessee would or could claim for any damages arising in connection with such lease or from Mortgagor's management of the Mortgaged Property. Mortgagor, if requested by Lender, shall furnish promptly to Lender (i) original or certified copies of all such leases now existing or hereafter created, as amended, and (ii) a current rent roll in form satisfactory to Lender. Lender shall have the right to notify at any time and from time to time any tenant of the Mortgaged Property of any provision of this Mortgage.

(b) The assignment contained in Paragraph (H) of the Granting Clauses shall not be deemed to impose upon Lender any of the obligations or duties of Mortgagor provided in any lease,

3571856

UNOFFICIAL COPY

Property of Cook County Clerk's Office

including, without limitation, any liability under the covenant of quiet enjoyment contained in any lease in the event that any tenant shall have been joined as a party defendant in any action to foreclose this Mortgage and shall have been barred and foreclosed thereby of all right, title and interest and equity of redemption in the Mortgaged Property or any part thereof. Mortgagor hereby acknowledges and agrees that Mortgagor is and will remain liable under such leases to the same extent as though the assignment contained in Paragraph (H) of the Granting Clauses had not been made. Lender disclaims any assumption of the obligations imposed upon Mortgagor under the leases, except as to such obligations which arise after such time as Mortgagee shall have exercised the rights and privileges conferred upon it by the assignment contained in Paragraph (H) of the Granting Clauses and assumed full and indefeasible ownership of the collateral thereby assigned. With respect to the assignment contained in Paragraph (H) of the Granting Clauses, Mortgagor shall, from time to time upon request of Lender, specifically assign to Lender as additional security hereunder, by an instrument in writing in such form as may be approved by Lender, all right, title and interest of Mortgagor in and to any and all leases now or hereafter of or affecting the Mortgaged Property or any part thereof together with all security therefor and all monies payable thereunder, subject to the conditional permission hereinabove given to Mortgagor to collect the rentals under such lease. Mortgagor shall also execute and deliver to Lender any notification, financing statement or other document reasonably required by Lender to perfect the foregoing assignment as to any such lease. The provisions of this Paragraph 1.14 shall be subject to the provisions of Paragraph (H) of the Granting Clauses.

1.15 Management of Mortgaged Property. Mortgagor shall manage or cause the Mortgaged Property to be managed at all times in accordance with sound business practice. In the event that either Mortgagor or Beneficiary does not manage the Mortgaged Property, Mortgagor shall cause the Mortgaged Property to be managed by a competent and reputable managing agent or other entity approved in writing by Lender pursuant to one or more management agreements, operating leases or concession agreements approved by Lender in writing in advance of execution thereof by Mortgagor or anyone acting on behalf of Mortgagor. Without limitation of the foregoing, any such management agreement, operating lease or concession agreement shall be cancellable upon thirty (30) days prior written notice. Following such approval, Mortgagor shall not permit any of such management agreements, operating leases or concession agreements to be terminated, modified, amended or extended, or permit a change in the identity of any management agent, lessee or concessionaire without Lender's prior written consent. Each management agreement, operating lease or concession agreement shall be subject in all respects to the lien of this Mortgage and the rights of Lender hereunder and each management agreement, operating lease or

35718756

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

03574050

concession agreement shall so provide. Without limitation of the foregoing, Lender may require, as a condition to its approval of any matter in this Paragraph 1.15, (a) the assignment to Lender by Mortgagor of all its right, title and interest in and to any such management agreement, operating lease or concession agreement, with the written consent of the other party thereto, or (b) the subordination of any such management agreement, operating lease or concession agreement to the lien of this Mortgage or (c) both of the foregoing.

1.16 Execution of Leases. Mortgagor shall not permit any leases to be made of the Mortgaged Property or existing leases to be renewed, modified, terminated or extended without the prior written consent of Lender as to the form and substance of each lease and the identity of each lessee. Following the execution or renewal of a lease in compliance with the foregoing provisions of this Paragraph 1.16, Mortgagor shall not permit such lease to be modified, terminated, renewed or extended except pursuant to the terms thereof or with the prior written consent of Lender.

1.17 Expenses. Mortgagor shall pay when due and payable, and otherwise on demand made by Lender, all appraisal fees, recording fees, taxes, brokerage fees and commissions, abstract fees, title insurance fees, escrow fees, attorneys' fees, court costs, documentary and expert evidence, fees of inspecting architects and engineers, and all other costs and expenses of every character which have been incurred or which may hereafter be incurred by Lender in connection with any of the following:

(a) The preparation, execution, delivery and performance of the Loan Instruments

(b) The funding of the Loan;

(c) Any court or administrative proceeding involving the Mortgaged Property or the Loan Instruments to which Lender is made a party by reason of its being a holder of any of the Loan Instruments, including without limitation bankruptcy, insolvency, reorganization, probate, eminent domain, condemnation, building code and zoning proceedings;

(d) Any court or administrative proceeding or other action undertaken by Lender to enforce any remedy or to collect any indebtedness due under this Mortgage or any of the other Loan Instruments following a default thereunder, including without limitation a foreclosure of this mortgage or a public or private sale under the Uniform Commercial Code;

3574856

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

0 3 5 7 4 3 5 6

(e) Any remedy exercised by Lender following an Event of Default including foreclosure of this Mortgage and actions in connection with taking possession of the Mortgaged Property or collecting rents assigned hereby and by the Assignment of Leases and Rents;

(f) Any activity in connection with any request by Mortgagor, or anyone acting on behalf of Mortgagor, that the Lender consent to a proposed action which, pursuant to this Mortgage or any of the other Loan Instruments may be undertaken or consummated only with the prior consent of Lender, whether or not such consent is granted; or

(g) Any negotiation undertaken between Lender and Mortgagor, or anyone acting on behalf of Mortgagor, pertaining to the existence or cure of any default under or the modification or extension of any of the Loan Instruments.

If Mortgagor fails to pay said costs and expenses as above provided, Lender may elect, but shall not be obligated, to pay the costs and expenses described in this Paragraph 1.17, and if Lender does so elect, then Mortgagor will, upon demand by Lender, reimburse Lender for all such expenses which have been or shall be paid or incurred by it. The amounts paid by Lender in respect of such expenses, together with interest thereon at the Default Rate (as defined in the Note) from the date paid by Lender until paid by Mortgagor, shall be added to Borrower's Liabilities, shall be immediately due and payable and shall be secured by the lien of this Mortgage and the other Loan Instruments. In the event of foreclosure hereof, Lender shall be entitled to add to the indebtedness found to be due by the court a reasonable estimate of such expenses to be incurred after entry of the decree of foreclosure. To the extent permitted by law, Mortgagor agrees to hold harmless Lender against and from, and reimburse it for, all claims, demands, liabilities, losses, damages, judgments, penalties, costs and expenses, including without limitation attorneys' fees, which may be imposed upon, asserted against, or incurred or paid by it by reason of or in connection with any bodily injury or death or property damage occurring in or upon or in the vicinity of the Mortgaged Property through any cause whatsoever, or asserted against it on account of any act performed or omitted to be performed hereunder, or on account of any transaction arising out of or in any way connected with the Mortgaged Property, this Mortgage, the other Loan Instruments, any of the indebtedness evidenced by the Note or any of Borrower's Liabilities.

1.18 Lender's Performance of Mortgagor's Obligations.

If Mortgagor fails to pay any tax, assessment, encumbrance or other imposition, or to furnish insurance hereunder, or to

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

0 3 5 7 4 3 5 6

perform any other covenant, condition or term in this Mortgage, the Note or any other Loan Instrument, Lender may, but shall not be obligated to, pay, obtain or perform the same. All payments made, whether such payments are regular or accelerated payments, and costs and expenses incurred or paid by Lender in connection therewith shall be due and payable immediately. The amounts so incurred or paid by Lender, together with interest thereon at the Default Rate (as defined in the Note) from the date paid by Lender until reimbursed by Mortgagor, shall be added to Borrower's Liabilities and secured by the lien of this Mortgage and the Loan Instruments. Lender is hereby empowered to enter and to authorize others to enter upon the Mortgaged Property or any part thereof for the purpose of performing or observing any covenant, condition or term that Mortgagor has failed to perform or observe, without thereby becoming liable to Mortgagor or any person in possession holding under Mortgagor. Performance or payment by Lender of any obligation of Mortgagor shall not relieve Mortgagor of said obligation or of the consequences of having failed to perform or pay the same and shall not effect the cure of any Event of Default.

1.19 **Payment of Superior Liens.** To the extent that Lender, after the date hereof, pays any sum due under any provision of law or instrument or document creating any lien superior or equal in priority in whole or in part to the lien of this Mortgage, Lender shall have and be entitled to a lien on the premises equal in parity with that discharged, and Lender shall be subrogated to and receive and enjoy all rights and liens possessed, held or enjoyed by, the holder of such lien, which shall remain in existence and benefit Lender to secure the Note and all obligations and liabilities secured hereby. Mortgagor shall be subrogated, notwithstanding their release of record, to mortgages, trust deeds, superior titles, vendors' liens, mechanics' and materialmen's liens, charges, encumbrances, rights and equities on the Mortgaged Property to the extent that any obligation under any thereof is paid or discharged with proceeds of disbursements or advances under the Note or other indebtedness secured hereby.

1.20 **Books and Records.** Beneficiary shall keep and maintain at all times complete, true and accurate books of account and records reflecting the results of the operation of the Mortgaged Property. Beneficiary shall furnish to Lender within ninety (90) days after the end of Beneficiary's fiscal year, financial statements pertaining to the Mortgaged Property in form reasonably satisfactory to Lender, including a statement of income and expenses with respect to the Mortgaged Property for the fiscal year, all such statements to be prepared in accordance with generally accepted accounting principles consistently applied and certified by an independent certified public accountant satisfactory to Lender. Without limitation of the foregoing, Beneficiary shall furnish such interim unaudited financial

3571856

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

0 3 5 7 4 3 5 6

statements and other information pertaining to the Mortgaged Property and the operation thereof as Lender may, from time to time, require. In the event that Beneficiary fails to comply with the requirements set forth above, Lender shall have the right to have Beneficiary's books and records audited by an independent certified public accountant, and the cost of such audit shall be the obligation of Mortgagor. Mortgagor and its designated agents shall have the right to inspect Beneficiary's books and records with respect to the Mortgaged Property at all reasonable times. In the event of a foreclosure of this Mortgage, all of Beneficiary's books and records maintained in connection with the Mortgaged Property shall be made available to the successful bidder at the foreclosure sale for inspection and copying for a period of not less than three (3) years following said sale.

1.21 Estoppel Affidavits. Mortgagor, within ten (10) days after written request from Lender, shall furnish a written statement executed by Mortgagor setting forth the unpaid principal of, and interest on, the Note, and any other unpaid sums secured hereby, and whether or not any offsets or defenses are claimed to exist against such principal and interest or other sums and, if such offsets or defenses are claimed, the specific basis and amount of each such offset or defense.

1.22 Use of the Mortgaged Property. Mortgagor shall not suffer or permit the Mortgaged Property, or any portion thereof, to be used for any purpose other than an office/warehouse/industrial building. Notwithstanding the foregoing, Mortgagor shall not suffer or permit the Mortgaged Property to be used by the public, as such, without restriction or in such manner as might reasonably tend to impair Mortgagor's title to the Mortgaged Property or any portion thereof, or in such manner as might reasonably make possible a claim or claims of easement by prescription or adverse possession by the public, as such, or of implied dedication of the Mortgaged Property or any portion thereof. Mortgagor shall not use or permit the use of the Mortgaged Property or any portion thereof for any unlawful purpose.

1.23 Litigation Involving Mortgaged Property. Mortgagor shall promptly notify Lender of any litigation, administrative procedure or proposed legislative action initiated against Mortgagor, or either of them, or the Mortgaged Property or in which the Mortgaged Property is directly or indirectly involved including any proceedings which seek to (i) enforce any lien against the Mortgaged Property, (ii) correct, change or prohibit any existing condition, feature or use of the Mortgaged Property, (iii) condemn or demolish the Mortgaged Property, (iv) take, by the power of eminent domain, any portion of the Mortgaged Property or any property which would damage the Mortgaged Property, (v) modify the zoning applicable to the Mortgaged

3571856

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

0.3574356

Property, (vi) modify, terminate or affect in any way the rights under the License Agreement, or (vii) otherwise materially and adversely affect the Mortgaged Property. Mortgagor shall initiate or appear in any legal action or other appropriate proceedings when necessary to protect the Mortgaged Property from damage. Mortgagor shall, upon written request of Lender, represent and defend the interests of Lender in any proceedings described in this Paragraph 1.23 or, at Lender's election, pay the fees and expenses of any counsel retained by Mortgagee to represent the interest of Lender in any such proceedings.

1.24 Required Notices. Mortgagor shall notify Mortgagee promptly of the occurrence of any of the following: (i) receipt of notice from any governmental authority relating to the violation of any rule, regulation, law or ordinance, the enforcement of which would materially and adversely affect the Mortgaged Property; (ii) material default of any tenant leasing all or any portion of the Mortgaged Property or receipt of any notice from any such lessee claiming that a default by landlord has occurred under the lease; or (iii) commencement of any judicial or administrative proceedings by or against or otherwise adversely affecting Trustee, Beneficiary or the Mortgaged Property.

1.25 Right of First Refusal on Future Financing.

(a) Lender shall have the right of first refusal to provide each of the construction and the permanent financing for the addition which Sperry may direct Mortgagor to construct on the Mortgaged Property (the "Addition") pursuant to Section 18.0 of the Lease Extension (as defined in Paragraph 1.06.5 above). Mortgagor shall submit to Lender a letter which states the type of financing, the term and rate desired and such other information as may be reasonably necessary for Lender to make an informed decision. Lender, within ten (10) business days after receipt, will either request Mortgagor to file a formal loan application or decline to pursue the proposed financing. Following receipt of a formal application, Lender will approve or reject such application within fifteen (15) business days after receipt of such application and all necessary information relating thereto. If Lender rejects the preliminary submission or the formal loan application, Mortgagor may proceed to submit to other lenders loan requests containing the same terms and conditions as presented to Lender. Any variation in such terms and conditions approved by such other lender shall renew Lender's right of first refusal. If Lender declines to provide the construction financing, it shall continue to have the right of first refusal to provide the financing for the period after the construction is completed.

(b) If Lender declines to provide the construction financing for such Addition, Mortgagor may seek alternative first mortgage construction financing and if Lender declines to provide

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

0 3 5 7 4 5 6

the permanent financing for such Addition, Mortgagor may seek alternative first mortgage permanent financing, from other institutions, provided Mortgagor submits to such alternative lender's loan requests containing the same terms and conditions as presented to Lender in accordance with Paragraph 1.25(a) above. If Mortgagor procures such alternative first mortgage financing, Lender shall release the liens of this Mortgage, the Security Agreement, the Assignment of Leases and Rents with respect to the site of the Addition (being all of Lot 7 of the Land, and if the Addition is constructed to abut the existing building, that portion of the Mortgaged Property west of a line which is the face of the west wall of the existing building (the "Addition Parcel")) and shall enter into a party wall agreement in form and substance satisfactory to it to permit the Addition to abut the existing building or to use the west wall of the existing building as a party wall, provided that all of the following conditions are first met: (i) the Addition is to be constructed in a manner which will permit the same to exist and be operated as a separate building (subject to party wall rights, if any) in compliance with all applicable land use restrictions and zoning, building and similar statutes, codes and regulations without reliance on the lot area of the real estate constituting the Land less the Addition Lot (the "Remaining Parcel") or on any "grandfather" provisions; (ii) the Mortgaged Property as it then exists (a) complies with all applicable land use restrictions and zoning, building and similar statutes, codes and regulations without reliance on the lot area of the Addition Parcel or on any "grandfather" provisions and (b) continue to contain at least 191 paved parking spaces; (iii) prior to any such release or construction, Mortgagor shall obtain and present to Lender a Prior Compliance Certificate from the Village of Elk Grove Village (as provided for in the Village of Elk Grove Village Zoning Ordinance (the "Village Ordinance")) showing that the proposed use of the Addition site and of the Mortgaged Property after release of the Addition site will satisfy the requirements of the Village Ordinance; (iv) Sperry as tenant enters into (a) a new lease for the Addition on the same terms and conditions as provided in the Sperry Lease including, without limitation, an initial ten (10) year term; (b) an amendment to the Sperry Lease which deletes the Addition as part of the Leased Premises (as defined in the Sperry Lease) and which provides that any default under the Sperry Lease for the Addition is not a default under the provisions of the Sperry Lease; (v) prior to any such release or construction, Mortgagor shall obtain and present to Lender satisfactory evidence that Mortgagor has all requisite easements and licenses across the Addition Parcel and the Remaining Parcel, for the benefit of the Addition Parcel and the Remaining Parcel for access, drainage, utilities and such other matters as may be required to use and operate the Improvements (such easements, to the extent benefitting the Remaining Parcel are collectively referred to herein as the "Beneficial Easements"); (vi) prior to any such release or construction, Mortgagor shall obtain and

3571856

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

0 3 5 7 4 3 5 6

present to Lender a commitment to issue an endorsement modifying Lender's title insurance policy with respect to the Mortgaged Property which endorsement would, upon recording of such release, delete the Addition Parcel and add the Beneficial Easements as part of the insured property without raising any new exceptions to such title policy; (vii) plans (including site plan) and specifications for the Addition and a plat of survey showing the Addition Parcel, the Remaining Parcel and all Improvements and proposed easements thereon are approved by Lender, which approval shall not be unreasonably withheld if the Addition and the existing building are of substantially comparable design and quality; and (viii) prior to any such release or construction, in the event that Lender has only declined to provide construction financing for the Addition, Mortgagor shall cause to be recorded with respect to the Addition Parcel a memorandum setting forth the provisions of this Paragraph 1.25 with respect to Lender's right of first refusal on future permanent financing for the Addition. Plans and specifications submitted by Mortgagor to Lender shall be approved or rejected within fifteen (15) business days from the date such plans and specifications in complete form are submitted.

(c) Upon the completion of the construction of the Addition, Mortgagor shall deliver to Lender a final plat of survey showing the Addition Parcel, the Remaining Parcel and all Improvements and easements thereon.

ARTICLE TWO

DEFAULTS

2.01 **Event of Default.** The term "Event of Default", wherever used in this Mortgage, shall mean any one or more of the following events:

(a) If Mortgagor shall (i) fail to pay when due (A) any payment of principal when such payment shall become due and payable under the Note whether at maturity or otherwise; (B) any payment of interest under the Note when due and payable; (C) any deposit for taxes, assessments or insurance premiums due hereunder; or (D) any other sums to be paid by Mortgagor hereunder; (ii) fail to maintain or deliver the certificates of insurance and certified copies of policies of insurance required in this Mortgage and such failure shall continue for fifteen (15) days after the date notice thereof has been given by Lender to Mortgagor provided that there shall be no notice or grace period for any failure described in Paragraph 2.01(m) below; (iii) fail to keep, perform or observe any other covenant, condition or agreement on the part of Mortgagor in this Mortgage and such failure shall continue for fifteen (15) days after the date notice thereof has been given by Lender to Mortgagor, provided that such fifteen (15)

3571856

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

0 3 5 7 4 5 6

day period shall be extended to ninety (90) days in the event that such failure is not capable of being cured within the fifteen (15) day period, is capable of being cured within the ninety (90) day period, Mortgagor commences to cure such failure within said fifteen (15) day period and thereafter uses its best efforts to cure such failure as expeditiously as possible; or (iv) intentionally fail to keep, perform or observe any covenant, condition or agreement on the part of Mortgagor in this Mortgage.

(b) If an "Event of Default" shall occur under and as defined in any of the other Loan Instruments.

(c) Any material misstatement, omission or inaccuracy in that certain application dated July 25, 1986 executed and delivered to Lender by Mr. Walter Kaiser ("Application"), the certified financial statements of Messrs. Walter Kaiser and Jordan Kaiser, dated January 1, 1986 and the letter dated August 18, 1986 from Mr. Julius Lopin setting forth certain financial data or any other document submitted by Mortgagor or on Mortgagor's behalf to Lender, its counsel or Lake Michigan Financial Group, or the material misrepresentation or omission in any warranty or representation made herein or in any affidavit or certificate executed by Mortgagor, or either one of them, in connection with the Loan or the disbursement thereof.

(d) A loss, damage or destruction, any of which is uninsured, or taking by eminent domain or other condemnation proceedings of any substantial portion of the Mortgaged Property or any part of the Mortgaged Property which materially impairs any of the intended uses of the Mortgaged Property.

(e) The appointment of a receiver or trustee of Trustee, Beneficiary, any General Partner or Beneficiary, all or any part of the Mortgaged Property or Trustee's or Beneficiary's business pertaining to the operation of the Mortgaged Property.

(f) The occurrence of any of the following events:

(i) An admission in writing by Trustee, Beneficiary or any of the General Partners of Beneficiary receiving such transfer of his or its inability to pay debts as they become due;

(ii) The institution by Trustee, Beneficiary or any of the General Partners of Beneficiary of bankruptcy, reorganization, insolvency or arrangement proceedings of any kind under federal

3571856

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

0 3 5 7 4 0 5 6

bankruptcy statutes, or any similar law (state or federal) now or hereafter existing;

(iii) The institution against Trustee, Beneficiary or any of the General Partners of Beneficiary of bankruptcy, reorganization, insolvency or arrangement proceedings of any kind under federal bankruptcy statutes or any similar law (state or federal) now or hereafter existing which proceedings are not dismissed within sixty (60) days of filing;

(iv) The making of a general assignment for the benefit of creditors by Trustee, Beneficiary, or any of the General Partners of Beneficiary;

(v) The declaration by any court, government or governmental agency of the bankruptcy or insolvency of Trustee, Beneficiary or any of the General Partners of Beneficiary;

(vi) The entry of a final judgment against Trustee or Beneficiary for \$25,000 or more which is not satisfied within thirty (30) days of the date on which such judgment shall have become final and all stays of execution pending appeal or otherwise shall have expired;

(vii) The issuance of a writ or warrant of attachment, levy, seizure or distraint or any similar process against Trustee, Beneficiary or any of the General Partners of Beneficiary of all or a material part of the Mortgaged Property which is not stayed within sixty (60) days of issuance or the lapse of any such stay;

(viii) The voluntary or involuntary dissolution of Beneficiary or any of the General Partners of Beneficiary; or

(ix) The declaration by any court of competent jurisdiction, after all stays of execution pending or otherwise have expired, that Trustee, Beneficiary or any of the General Partners of Beneficiary have committed fraud, misrepresentation or depletion of the assets of Mortgagor or Beneficiary in an attempt to defraud creditors.

(h) The filing of any lien or claim for lien against any portion of the Mortgaged Property (except as provided in Paragraph 1.05 of this Mortgage) and the failure of Mortgagor, within thirty (30) days following the date of recording, to discharge such lien or to induce a title insurance company acceptable to Mortgagee to insure Lender over such lien.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

0 3 5 7 4 3 6

(i) The sale, assignment, conveyance, transfer, mortgage, lease (other than leases made in accordance with the provisions of this Mortgage), pledge, lien or encumbrance of, or the granting of an option in, or any contract for any of the foregoing (on an installment basis or otherwise), in violation of Paragraph 1.09 hereof.

(j) The amendment of the partnership agreement creating Beneficiary, without the prior written consent of Lender.

(k) The failure to pay when due any indebtedness secured by an interest in the Mortgaged Property, or the Beneficial interest in Trustee.

(l) A default in the performance of the obligations of the landlord under the Sperry Lease which could entitle Sperry to terminate the Sperry Lease or could result in a reduction in rent and such default is not waived in writing by Sperry.

(m) The failure by Mortgagor to obtain and deliver to Lender on or before January 5, 1987 a certified copy of a policy of insurance satisfying the requirements set forth in Paragraph 1.06.1 of this Mortgage (including without limitation, the requirement that the insurance carrier shall be acceptable to Lender, and Sperry Insurance Co., Ltd. or any other captive insurance company is not acceptable for such purposes).

ARTICLE THREE

REMEDIES

3.01 **Acceleration of Maturity.** If an Event of Default shall have occurred, Lender may declare the outstanding principal amount of the Note and the interest accrued thereon and any other Borrower's Liabilities to be immediately due and payable, and upon such declaration, such principal and interest and other Borrower's Liabilities declared due shall immediately become and be due and payable without further demand or notice.

3.02 **Lender's Power of Enforcement.** If an Event of Default shall have occurred, Lender may, either with or without entry or taking possession as hereinabove provided or otherwise, and without regard to whether or not Borrower's Liabilities shall be due, and without prejudice to the right of Lender thereafter to bring an action of foreclosure or any other action for any default existing at the time such earlier action was commenced, proceed by any appropriate action or proceeding: (a) to enforce payment of the Note and/or any other Borrower's Liabilities or

UNOFFICIAL COPY

Property of Cook County Clerk's Office

the performance of any term hereof or any of the other Loan Instruments; (b) to foreclose this Mortgage and to have sold, as an entirety or in separate lots or parcels, the Mortgaged Property; and (c) to pursue any other remedy available to it. Lender may take action either by such proceedings or by the exercise of its powers with respect to entry or taking possession, or both, as Lender may determine.

3.03 Right of Partial Foreclosure. If an Event of Default shall have occurred, as an alternative to the right of foreclosure for the full secured indebtedness of the Note and the interest accrued thereon and any other Borrower's Liabilities, after acceleration thereof, Lender shall have the right to institute partial foreclosure proceedings with respect to the portion of said indebtedness so in default, as if under a full foreclosure, and without declaring the entire secured indebtedness due (such proceedings being referred to herein as "partial foreclosure"), and provided that if a foreclosure sale is made because of default of a part of the secured indebtedness, such sale may be made subject to the continuing lien of this Mortgage for the unmatured part of the secured indebtedness; and it is agreed that such sale pursuant to a partial foreclosure, if so made, shall not in any manner affect the unmatured part of the secured indebtedness, but as to such unmatured part, this Mortgage and the lien thereof shall remain in full force and effect just as though no foreclosure sale had been made under the provisions of this Paragraph 3.03. Notwithstanding the filing of any partial foreclosure or entry of a decree of sale therein, Lender may elect at any time prior to a foreclosure sale pursuant to such decree, to discontinue such partial foreclosure and to accelerate the secured indebtedness by reason of any uncured Event of Default upon which such partial foreclosure was predicated or by reason of any other defaults, and proceed with full foreclosure proceedings. It is further agreed that several foreclosures may be made pursuant to partial foreclosures without exhausting the right of full or partial foreclosure sale for any unmatured part of the secured indebtedness, it being the purpose to provide for a partial foreclosure sale of the secured indebtedness for any matured portion of the secured indebtedness without exhausting the power to foreclose and to sell the Mortgaged Property pursuant to any such partial foreclosure for any other part of the secured indebtedness, whether matured at the time or subsequently maturing, and without exhausting any right of acceleration and full foreclosure.

3.04 Lender's Right to Enter and Take Possession, Operate and Apply Income.

(a) If an Event of Default shall have occurred, (i) Mortgagor, upon demand of Lender, shall forthwith surrender to Lender the actual possession of the Mortgaged Property, and if and to the extent permitted by law, Lender itself, or by such

3574856

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

0 3 5 7 4 3 5 6

officers or agents as it may appoint, is hereby expressly authorized to enter and take possession of all or any portion of the Mortgaged Property and may exclude Mortgagor and its agents and employees wholly therefrom and shall have joint access with Mortgagor to the books, papers and accounts of Mortgagor; and (ii) notwithstanding the provisions of any lease or other agreement to the contrary, Mortgagor shall pay monthly in advance to Lender, on Lender's entry into possession, or to any receiver appointed to collect the rents, income and other benefits of the Mortgaged Property, the fair and reasonable rental value for the use and occupation of such part of the Mortgaged Property as may be in possession of Mortgagor, or any entity affiliated with or controlled by Mortgagor, or either of them, and upon default in any such payment Mortgagor shall vacate and surrender possession of such part of the Mortgaged Property to Lender or to such receiver, and in default thereof Mortgagor may be evicted by summary proceedings or otherwise.

(b) If Mortgagor shall for any reason fail to surrender or deliver the Mortgaged Property or any part thereof after Lender's demand, Lender may obtain a judgment or decree conferring on Lender the right to immediate possession or requiring Mortgagor to deliver immediate possession of all or part of the Mortgaged Property to Lender, to the entry of which judgment or decree Mortgagor hereby specifically consents. Mortgagor shall pay to Lender, upon demand, all costs and expenses of obtaining such judgment or decree and reasonable compensation to Lender, its attorneys and agents, and all such costs, expenses and compensation shall, until paid, be secured by the lien of this Mortgage.

(c) Upon every such entering upon or taking of possession, Lender, to the extent permitted by law, may hold, store, use, operate, manage and control the Mortgaged Property and conduct the business thereof, and, from time to time:

(i) perform such construction, make all necessary and proper maintenance, repairs, renewals, replacements, additions and improvements thereto and thereon, and purchase or otherwise acquire additional fixtures and personal property;

(ii) insure or keep the Mortgaged Property insured;

(iii) manage and operate the Mortgaged Property and exercise all the rights and powers of the Mortgagor, on its behalf or otherwise, with respect to the same;

(iv) enter into agreements with others to exercise the powers herein granted Lender, all as Lender from time to time may determine; and Lender may collect and

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

0 3 5 7 4 0 5 6

receive all the rents, income and other benefits of the Mortgaged Property, including those past due as well as those accruing thereafter; and shall apply the monies so received by Lender, in such priority as Lender may determine, to (1) the payment of interest, principal and other payments due and payable on the Note or pursuant to this Mortgage or to any other Borrower's Liabilities, (2) deposits for taxes and assessments, (3) the payment or creation of reserves for payment of insurance, taxes, assessments and other proper charges or liens or encumbrances upon the Mortgaged Property or any part thereof, and (4) the compensation, expenses and disbursements of the agents, attorneys and other representatives of Mortgagee; and

(v) exercise such remedies as are available to Lender under the Loan Instruments or at law or in equity.

Lender shall surrender possession of the Mortgaged Property to Mortgagor only when all amounts then due under any of the terms of this Mortgage shall have been paid and all other defaults have been cured. However, the same right to take possession shall exist if any subsequent Event of Default shall occur.

3.05 Leases. Lender is authorized to foreclose this Mortgage subject to the rights, if any, of any or all tenants of the Mortgaged Property, even if the rights of any such tenants are or would be subordinate to the lien of this Mortgage. Lender may elect to foreclose the rights of some subordinate tenants while foreclosing subject to the rights of other subordinate tenants. The failure to make any subordinate tenant a party defendant to any foreclosure proceedings and to foreclose its rights will not be, nor be asserted by Mortgagor, any junior lien holder, any tenant or any other party claiming by, through or under Mortgagor to be, a defense to any such foreclosure proceeding or any other proceedings instituted by Lender to collect the sums secured hereby or to collect any deficiency remaining unpaid after the foreclosure sale of the Mortgaged Property. Each lease entered into by Mortgagor subsequent to the date hereof shall provide that, and any such lease shall be subject to the following provisions whether or not such lease shall so provide, (i) Lender, at its election, may execute and record an instrument which shall be deemed to cause such lease to be either prior or subordinate (whichever Lender elects) to the lien of this Mortgage, (ii) upon any foreclosure hereof or the acceptance of a deed in lieu of foreclosure, the tenant under said lease (other than a lease which is subordinate to the lien hereof and which is foreclosed in such foreclosure proceedings) shall attorn to the grantee in the deed or other purchaser at the sale and (iii) the tenant thereunder shall execute and deliver any confirmatory instruments which Lender may request in connection therewith, in

3574856

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

0 3 5 7 4 3 5 0

default of which a default shall have occurred under such lease. Lender shall be made, constituted and irrevocably appointed as such tenant's attorney-in-fact so to do in the event that tenant shall fail to do so within ten (10) days after written demand from Lender. The omission of any such provision from any such lease or the failure to record any such instrument shall not affect Lender's rights under this Paragraph 3.05.

3.06 Purchase by Lender. Upon any foreclosure sale, Lender may bid for and purchase all or any portion of the Mortgaged Property and, upon compliance with the terms of the sale, may hold, retain and possess and dispose such property in its own absolute right without further accountability.

3.07 Application of Foreclosure Sale Proceeds. The proceeds of any foreclosure sale of the Mortgaged Property or any part thereof received by Lender shall be applied by Lender to the indebtedness secured hereby in such order and manner as Lender may elect in a written notice to Mortgagor given on or before sixty (60) days following confirmation of the sale and in the absence of such election, then first to expenses of sale, second, to expenses including attorneys' fees of the foreclosure proceeding, third to interest and other sums due under the Note and then to any other Borrower's Liabilities. Any surplus, after payment of all of Borrower's Liabilities, shall be paid to Mortgagor.

3.08 Application of Indebtedness Toward Purchase Price. Upon any foreclosure sale, Lender may apply any or all of the indebtedness and other sums due to Lender under the Note, this Mortgage or any other Loan Instrument or any other Borrower's Liabilities, or any decree in lieu thereof, toward the purchase price.

3.09 Waiver of Appraisement, Valuation, Stay, Extension and Redemption Laws. Mortgagor agrees, to the full extent permitted by law, that in case of an Event of Default, neither Mortgagor nor anyone claiming through or under it will set up, claim or seek to take advantage of any appraisement, valuation, stay or extension laws now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Mortgage or the absolute sale of the Mortgaged Property or the final and absolute putting into possession thereof, immediately after such sale, of the purchaser thereat. Mortgagor, for itself and all who may at any time claim through or under it, hereby waives, to the full extent that it may lawfully so do, the benefit of all such laws, and any and all right to have the assets comprising the Mortgaged Property marshalled upon any foreclosure of the lien hereof and agrees that Lender or any court having jurisdiction to foreclose such lien may sell the Mortgaged Property in part or as an entirety. To the full extent permitted by law, Mortgagor hereby waives any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage,

UNOFFICIAL COPY

Property of Cook County Clerk's Office

on its own behalf, on behalf of the trust estate and all persons beneficially interested therein, and on behalf of each and every person, except judgment creditors of Mortgagor in its representative capacity and of the trust estate, acquiring any interest in or title to the Mortgaged Property subsequent to the date hereof.

3.10 Receiver - Lender in Possession. If an Event of Default shall have occurred, Lender, to the extent permitted by law and without regard to the value of the Mortgaged Property or the adequacy of the security for the indebtedness and other sums secured hereby, shall be entitled as a matter of right and without any additional showing or proof, at Lender's election, to either the appointment by the court of a receiver (without the necessity of Lender posting a bond) to enter upon and take possession of the Mortgaged Property and to collect all rents, income and other benefits thereof and apply the same as the court may direct or to be placed by the court into possession of the Mortgaged Property as mortgagee in possession with the same power herein granted to a receiver and with all other rights and privileges of a mortgagee in possession under law. The right to enter and take possession of and to manage and operate the Mortgaged Property, and to collect all rents, income and other benefits thereof, whether by a receiver or otherwise, shall be cumulative to any other right or remedy hereunder or afforded by law and may be exercised concurrently therewith or independently thereof. Lender shall be liable to account only for such rents, income and other benefits actually received by Lender, whether received pursuant to this Paragraph 3.10 or Paragraph 3.04. Notwithstanding the appointment of any receiver or other custodian, Lender shall be entitled as pledgee to the possession and control of any cash, deposits or instruments at the time held by, or payable or deliverable under the terms of this Mortgage to Lender.

3.11 Suits to Protect the Mortgaged Property. Mortgagee shall have the power and authority (but not the duty) to institute and maintain any suits and proceedings as Lender may deem advisable (a) to prevent any impairment of the Mortgaged Property by any acts which may be unlawful or which violate the terms of this Mortgage, (b) to preserve or protect its interest in the Mortgaged Property, or (c) to restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, rule or order might impair the security hereunder or be prejudicial to Mortgagee's interest.

3.12 Proofs of Claim. In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceedings affecting Mortgagor, Lender, to the extent permitted by law, shall be

UNOFFICIAL COPY

Property of Cook County Clerk's Office

entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have its claims allowed in such proceedings for the entire amounts due and payable under the Note, this Mortgage and any other Loan Instrument, at the date of the institution of such proceedings, and for any additional amounts which may become due and payable after such date.

3.13 Additional Remedies; Application of Monies by Lender.

(a) Upon occurrence of an Event of Default, in addition to all rights and remedies available to Lender under this Mortgage, the other Loan Instruments or at law or in equity, exercisable singly or in any combination whatsoever, as Lender may elect, Lender shall be entitled to sue for and to recover judgment against Mortgagor for Borrower's Liabilities due and unpaid together with costs and expenses, including, without limitation, the reasonable compensation, expenses and disbursements of Lender's agents, attorneys and other representatives, either before, after or during the pendency of any proceedings for the enforcement of this Mortgage; and the right of Lender to recover such judgment shall not be affected by any taking possession or foreclosure sale hereunder, or by the exercise of any other right, power or remedy for the enforcement of the terms of this Mortgage, or the foreclosure of the lien hereof.

(b) In case of a foreclosure sale of all or any part of the Mortgaged Property and of the application of the proceeds of sale to the payment of Borrower's Liabilities, Lender shall be entitled to enforce all other rights and remedies under the Loan Instruments in any combination whatsoever, either prior to, concurrently with or after a foreclosure sale.

(c) Mortgagor hereby agrees, to the extent permitted by law, that no recovery of any judgment by Lender under any of the Loan Instruments, and no attachment or levy of execution upon any of the Mortgaged Property or any other property of Mortgagor, shall (except as otherwise provided by law) in any way affect the lien of this Mortgage upon the Mortgaged Property or any part thereof or any lien, rights, powers or remedies of Lender hereunder, but such lien, rights, powers and remedies shall continue unimpaired as before until Borrower's Liabilities are paid in full.

(d) Any monies collected or received by Lender under this Paragraph 3.13 shall be applied to the payment of compensation, expenses and disbursements of the agents, attorneys and other representatives of Lender, and the balance remaining shall be applied to the payment of Borrower's Liabilities in such order and manner as Lender may elect. Any surplus, after payment of all Borrower's Liabilities, shall be paid to Mortgagor.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

3.14 Delay or Omission. No delay or omission of Lender in the exercise of any right, power or remedy accruing upon any Event of Default shall exhaust or impair any such right, power or remedy, or be construed to waive any such Event of Default or to constitute acquiescence therein. Every right, power and remedy given to Lender may be exercised from time to time and as often as may be deemed expedient by Lender.

3.15 Waiver of Default. No waiver of any Event of Default hereunder shall extend to or affect any subsequent or any other Event of Default then existing, or impair any rights, powers or remedies in respect thereof. If Lender (a) grants forbearance or an extension of time for the payment of any sums secured hereby, (b) takes other or additional security for the payment thereof, (c) waives or does not exercise any right granted in the Note, this Mortgage or any other Loan Instrument, (d) releases any part of the Mortgaged Property from the lien of this Mortgage or any other Loan Instrument, (e) consents to the filing of any map, plat or replat of the Land, (f) consents to the granting of any easement on the Land, or (g) makes or consents to any agreement changing the terms of this Mortgage or subordinating the lien or any charge hereof, no such act or omission shall release, discharge, modify, change or affect the lien of this Mortgage or any other Loan Instrument or the liability under the Note or other Loan Instruments of Mortgagor, any subsequent purchaser of the Mortgaged Property or any part thereof, or any maker, co-signer, endorser, surety or guarantor, except as otherwise expressly provided in an instrument or instruments executed by Lender. Except as otherwise expressly provided in an instrument or instruments executed by Lender, no such act or omission shall preclude Lender from exercising any right, power or privilege herein granted or intended to be granted in case of any Event of Default then existing or of any subsequent Event of Default, nor shall the lien of this Mortgage be altered thereby, except to the extent of any releases as described in clause (d), above, of this Paragraph 3.15.

3.16 Discontinuance of Proceedings; Position of Parties Restored. If Lender shall have proceeded to enforce any right or remedy under this Mortgage by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or such proceedings shall have resulted in a final determination adverse to Lender, then and in every such case Mortgagor and Lender shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of Lender shall continue as if no such proceedings had occurred or had been taken.

3.17 Remedies Cumulative. No right, power or remedy conferred upon or reserved to the Lender by the Note, this Mortgage or any other Loan Instrument or any instrument evidencing or securing Borrower's Liabilities is exclusive of any

UNOFFICIAL COPY

Property of Cook County Clerk's Office

other right, power or remedy (except as provided in Paragraph 3.03 above), but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or under the Note or any other Loan Instrument or any instrument evidencing or securing Borrower's Liabilities, or now or hereafter existing at law, in equity or by statute.

3.18 Interest After Event of Default. If an Event of Default shall have occurred, all sums outstanding and unpaid under the Note and all other Borrower's Liabilities shall, to the extent permitted by law, bear interest thereafter at the Default Rate as defined in the Note until such Event of Default is cured.

ARTICLE FOUR

MISCELLANEOUS PROVISIONS

4.01 Heirs, Successors and Assigns Included in Parties. All covenants and agreements contained in this Mortgage shall bind the successors and assigns of Mortgagor, or either of them, including any subsequent owner of all or any part of the Mortgaged Property and inure to the benefit of the successors and assigns of Lender. Whenever Mortgagor, Lender, or either of them, is named or referred to herein, heirs and successors and assigns of such person or entity shall be included in such reference. This Paragraph 4.01 shall not be construed to permit an assignment, transfer, conveyance, encumbrance or other disposition otherwise prohibited by this Mortgage.

4.02 Notices. All notices, requests, reports demands or other instruments required or contemplated to be given or furnished under this Mortgage to Mortgagor or Lender shall be directed to Mortgagor or Lender as the case may be at the following addresses:

If to Lender: SMA Life Assurance Company
440 Lincoln Street
Worcester, Massachusetts 01605
Attention: Investment Management
Department

with a copy to: Lake Michigan Financial Group
69 West Washington Street
Chicago, Illinois 60602
Attention: Mr. David A. Downey

If to Mortgagor: Lunt Realty Associates
c/o Kaiser Investments
2501 North Wayne Street
Chicago, Illinois 60614

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

0 3 5 7 4 3 5 6

with a copy to: Shepp and Hellman
25 East Washington Street
Suite 600
Chicago, Illinois 60602
Attention: Eugene L. Shepp, Esq.

and: Lopin Investment Group
4001 West Devon
Suite 404
Chicago, Illinois 60646

Any such notices, requests, reports, demands or other instruments shall be (i) personally delivered to the offices set forth above, in which case they shall be deemed delivered on the date of delivery to said offices, (ii) sent by certified mail, return receipt requested, in which case they shall be deemed delivered on the date of delivery set forth in the return receipt, unless delivery is delayed or refused by the addressee, in which event they shall be deemed delivered on the date mailed, or (iii) sent by air courier (Federal Express, Express Mail or like service), in which case they shall be deemed received on the date of actual delivery. Either party may change the address to which any such notice, report, demand or other instrument is to be delivered by furnishing written notice of such change to the other party in compliance with the foregoing provisions.

4.03 Table of Contents and Headings. The table of contents and headings of the articles, sections, paragraphs and subdivisions of this Mortgage are for convenience only, are not to be considered a part hereof, and shall not limit, expand or otherwise affect any of the terms hereof.

4.04 Invalid Provisions. In the event that any of the covenants, agreements, terms or provisions contained in the Note, this Mortgage or in any other Loan Instrument or the application thereof to any person, entity or circumstance, shall be invalid, illegal or unenforceable in any respect, the validity of the remaining covenants, agreements, terms or provisions contained herein or in the Note or in any other Loan Instrument (or the application of the covenant, agreement, term held to be invalid, illegal or unenforceable, to persons, entities or circumstances other than those in respect of which it is invalid, illegal or unenforceable) shall be in no way affected, prejudiced or disturbed thereby.

4.05 Changes. Neither this Mortgage nor any term hereof may be released, changed, waived, discharged or terminated orally, or by any action or inaction, but only by an instrument in writing signed by the party against which enforcement of the release, change, waiver, discharge or termination is sought. To the extent permitted by law, any agreement hereafter made by

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

0 3 5 7 4 0 5 6

Mortgagor and Lender relating to this Mortgage shall be superior to the rights of the holder of any intervening lien or encumbrance.

4.06 Governing Law. This Mortgage shall be construed, interpreted, enforced and governed by and in accordance with the laws of the State of Illinois.

4.07 Future Advances. This Mortgage is given to secure not only existing indebtedness, but also future advances (whether such advances are obligatory or are to be made at the option of Lender, or otherwise) made by Lender under the Note, to the same extent as if such future advances were made on the date of the execution of this Mortgage. The total amount of indebtedness that may be so secured may decrease or increase from time to time, but all indebtedness secured hereby shall, in no event, exceed five times the aggregate face amount of the Note.

4.08 Release. Upon full payment of Borrower's Liabilities, Lender shall issue to Mortgagor an appropriate release deed in recordable form.

4.09 Attorneys' Fees. Whenever reference is made herein to the payment or reimbursement of attorneys' fees, such fees shall be deemed to include allocable compensation and actual overhead of staff counsel, if any, of Lender in addition to the fees and expenses incurred in connection with the appeal of any matter arising under the Loan Instruments if Lender is the prevailing party therein.

4.10 Counterparts. This Mortgage may be executed in counterparts, each of which shall be an original and all of which, when taken together, shall constitute one and the same instrument.

4.11 Consent. Unless explicitly provided herein to the contrary, if Lender's consent, approval, agreement or assent is required under this Mortgage, then Lender shall have the right to withhold any such consent in its absolute discretion.

4.12 Exculpation From Liability. Amalgamated Trust and Savings Bank is a party to this instrument, not in its individual capacity but as trustee under a Trust Agreement dated May 1, 1970 and known as Trust No. 2167. Insofar as the liability of Amalgamated Trust and Savings Bank is concerned, this instrument is enforceable only against, and any claims hereon are payable only out of, any trust property which may be held thereunder, but this clause shall not affect Lender's remedies under any of the other Loan Instruments. Any and all liability of Amalgamated Trust and Savings Bank in its individual capacity is hereby expressly waived by Lender and its successors and assigns.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

0 3 5 7 4 3 5 0

IN WITNESS WHEREOF, Mortgagor has caused this instrument to be executed by its duly authorized officers and partners as of the day and year first above written.

AMALGAMATED TRUST AND SAVINGS BANK, not in its individual capacity but as Trustee under a Trust Agreement dated May 1, 1970 and known as Trust No. 2167

ATTEST:

See attached order for
By signature of Trustee

Its _____

Its _____

Property of Cook County Clerk's Office

3574856

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Exhibit A

NOTE

THIS NOTE dated as of December 2, 1986, is made and executed in Chicago, Illinois by Amalgamated Trust and Savings Bank, not in its individual capacity but as trustee under a Trust Agreement dated May 1, 1970 and known as Trust No. 2167 ("Mortgagor"), in the original principal amount of \$6,500,000.00, with interest as provided herein, and is payable to the order of SMA Life Assurance Company, a Delaware corporation ("Lender").

RECITALS

I. Lunt Realty Associates, an Illinois general partnership ("Beneficiary") owns 100% of the beneficial interest in Mortgagor. The sole general partners of Beneficiary are Kaiser Investments, an Illinois limited partnership ("Kaiser"), and the Julius Lopin Revocable Trust, an Illinois trust (the "Lopin Trust") (the Lopin Trust and Kaiser are collectively referred to herein as the "General Partners of Beneficiary"). Beneficiary and Lender have entered into a commitment dated September 23, 1986 (the "Loan Commitment"), pursuant to which Lender has agreed, subject to the terms and conditions thereof, to make a loan to Mortgagor in an amount not to exceed the principal amount hereof (the "Loan"). This Note evidences Mortgagor's unconditional obligation to repay the Loan.

II. The payment of this Note is secured by, among other things, (a) a Mortgage and Security Agreement (the "Mortgage") executed by Mortgagor on certain real and personal property located in Cook County, Illinois (the "Mortgaged Property"); (b) an Assignment of Leases and Rents pertaining to the Mortgaged Property; (c) a Security Agreement relating to personal property; and (d) a Collateral Assignment of Beneficial Interest with respect to Beneficiary's interest in Mortgagor. This Note, together with the Loan Commitment and any and all mortgages, security agreements, assignments of leases and rents, guaranties, collateral assignments and any other documents and instruments now or hereafter executed and delivered in connection with the Loan, and any and all amendments, renewals, extensions, modifications and replacements hereof and thereof, are hereafter collectively referred to herein as the "Loan Instruments". The terms of the other Loan Instruments are hereby incorporated, by reference, in this Note.

I

PAYMENT TERMS

1.1 **The Promise to Pay.** Mortgagor hereby promises to pay to the order of Lender the principal sum of \$6,500,000.00,

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

0 3 5 7 4 0 5 6

together with interest thereon compounded monthly at the rate of 9.5% per annum, in the following manner:

(a) On the date of disbursement of the proceeds of the Loan (the "Disbursement Date"), a prepayment of interest accruing for the remainder of the calendar month in which the Disbursement Date occurs;

(b) On the first day of the calendar month following the first full calendar month following the Disbursement Date and on the first day of each calendar month thereafter until the principal amount hereof is paid in full, a payment of principal and interest in the amount of \$55,412.50; and

(c) On the tenth anniversary of the Disbursement Date (the "Maturity Date"), the entire outstanding principal balance and all interest accrued thereon, unless earlier due and payable by reason of the acceleration of the maturity of this Note. THIS IS A BALLOON NOTE AND, ON THE MATURITY DATE, A SUBSTANTIAL PORTION OF THE PRINCIPAL AMOUNT OF THIS NOTE WILL REMAIN UNPAID BY THE MONTHLY PAYMENTS ABOVE REQUIRED.

All payments made in accordance with this Paragraph 1.1 shall be applied first to accrued interest and then to principal. All other payments made in connection with the Loan shall be applied in such order and manner as Lender may elect. Interest shall be computed on the basis of a 360-day year and charged for the actual number of days elapsed.

1.2 Prepayment. Mortgagor shall not be entitled to prepay the Loan in whole or in part except as expressly provided in this Note. Prepayment of the indebtedness evidenced hereby may be made only in accordance with the following provisions:

(a) Mortgagor may prepay the Loan, in whole but not in part, on a regularly scheduled payment date, provided that (i) Mortgagor shall have given written notice to Lender of the date on which Mortgagor proposes to make such prepayment (the "Prepayment Date") no later than 30 days prior to the Prepayment Date and (ii) Mortgagor shall have paid to Lender on the Prepayment Date the entire unpaid principal amount hereof, all accrued interest thereon and all other sums payable pursuant to the Loan Instruments or secured by the Mortgage, plus a premium ("Premium") equal to the greater of (x) 1% of the entire unpaid principal amount hereof (the "Base Premium") or (y) an amount calculated as follows:

(i) There shall be determined, as of the seventh business day preceding the Prepayment

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

0 3 8 7 4 1 5 6

Date, the amount, if any, by which the rate of interest chargeable hereunder (expressed as .095) exceeds the annual yield (expressed in the same manner) for United States Treasury bills or notes maturing nearest the Maturity Date as reported by The Wall Street Journal or, if The Wall Street Journal is no longer published or no longer publishes annual yields for United States Treasury bills or notes, some other daily financial or governmental publication of national circulation determined by Lender, in its sole discretion, such annual yield being hereinafter referred to as the "Current Yield";

(ii) The difference calculated pursuant to clause (i) above shall be multiplied by the outstanding principal balance hereof as of the Prepayment Date;

(iii) The product calculated pursuant to clause (ii) above shall be divided by 12;

(iv) The quotient calculated pursuant to clause (iii) above shall be multiplied by the number of months from the Prepayment Date to and including the Maturity Date.

Notwithstanding the foregoing, (i) the Base Premium shall be the minimum Premium due upon prepayment and Mortgagor shall not be entitled to any reduction in the Base Premium or any other amount due under this Note or the other Loan Instruments in the event that the Current Yield exceeds the rate of interest chargeable hereunder and (ii) Mortgagor shall be entitled to prepay the Loan, in whole but not in part, on any date following sixty days prior to the Maturity Date, provided that Mortgagor satisfies the conditions set forth in Section 1.2(a)(i) and 1.2(a)(ii), except that Mortgagor shall not be required to pay the Premium. For the purpose of this Subparagraph 1.2(a) any portion of a calendar month shall be deemed to constitute one full month.

(b) Except as otherwise provided herein, a Premium shall be due and payable in connection with any prepayment. Without limitation of the foregoing, a premium shall be due in connection with any acceleration of the maturity hereof following an Event of Default (as defined herein) or otherwise as provided herein, which premium shall be equal to the Premium to which Lender would have been entitled had Mortgagor elected to exercise its prepayment privilege as of the date of any such acceleration; provided however, that

UNOFFICIAL COPY

Property of Cook County Clerk's Office