

UNOFFICIAL COPY

3619811 0 3 6 1 9 0 1 1

MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE AND SECURITY AGREEMENT ("Mortgage"), made on APRIL 24, 1987, by and between USAMERIBANC/ELK GROVE, formerly known as Bank of Elk Grove, not personally but as Trustee under a Trust Agreement dated JULY 1, 1985, and known as Trust Number 2404 ("Trustee") whose address is Arlington Heights Road and Higgins Road, Elk Grove Village, Illinois, (Trustee hereinafter referred to as "Borrower"), and USAMeribanc/Woodfield, Higgins and Meacham Roads, Schaumburg, Illinois, 60196 (hereinafter called the "Lender");

WITNESSETH THAT:

WHEREAS, Trustee is indebted to Lender in the principal sum of FOUR HUNDRED THOUSAND AND NO/100 (\$400,000.00), which indebtedness is evidenced by Trustee's Installment Note of even date herewith (herein called "Note"), in said principal amount, payable to Lender and which matures, if not sooner paid, on MAY 10, 1992, which Note contains provisions for acceleration in event of default and provides for payment of interest on the then principal balance remaining unpaid at the announced prime lending rate of Lender as changing from time to time and for the payment of costs of collection, including attorneys' fees in the event of default, waives demand, presentment for payment, protest, notice of nonpayment and protest, and the terms of which are hereby incorporated by reference and made a part hereof.

NOW, THEREFORE, Borrower, in order to secure to Lender the repayment of the indebtedness evidenced by the Note, and the performance of the covenants and agreements of Borrower contained herein, does hereby grant, bargain, sell, transfer, assign, convey and confirm and mortgage unto Lender the property located at 631-653 Morse Avenue, Schaumburg, State of Illinois, which property is legally described in Exhibit A attached hereto; together with all buildings, structures and other improvements and chattels now on said land or that may hereafter be erected or placed thereon; all elevators, motors and machinery; also together with all mineral, oil and gas rights and interests; also together with all shrubbery and trees now growing or that hereafter may be planted or grown thereon; and also together with all crops and/or produce of any kind now growing or that may be hereafter growing, grown or produced upon said land or any part thereof; and also development rights or credits, air rights, water, water rights (whether riparian, appropriative or otherwise, and whether or not appurtenant) and water stock;

Also together with all and singular the ways, easements and other rights, and all tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, including but not limited to all rights in any abutting public or private streets and alleys and in any submerged lands adjacent thereto (hereinafter referred to as the "Premises").

And all present and future rents, issues, avails, profits and proceeds (hereinafter referred to as the "Rents") of or from the Premises, the "Leases" and/or and the "Equipment" (both of which terms are hereinafter defined), howsoever occurring, existing, created or arising;

And all present and future permits, licenses and franchises of or from the Premises (collectively, the "Licenses"), leases, agreements, tenancies, licenses and franchises (hereinafter collectively referred to as the "Leases") of or from the Premises and/or the Equipment or in any way, manner or respect required, existing, used or useable in connection with the Premises and/or the Equipment or the management, maintenance, operation or business thereof, including, without limitation, those Licenses and Leases issued by any governmental authority, and all deposits of money as advance rent or for security under any or all of the Leases and all guaranties of lessees' performances thereunder;

And all present and future judgments, awards of damages and settlements made as a result or in lieu of any taking of the Premises, the Equipment and/or the Leases, or any part thereof, under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) thereto;

PREPARED BY AND MAILED TO:

Ruby D. Feeley, Loan Officer
USAMeribanc/Woodfield
Higgins & Meacham Roads
Schaumburg, IL 60196

3619811

1/92
Copy
[Signature]

76-49-805-42

UNOFFICIAL COPY

And all present and future apparatus, machinery, equipment, fixtures and articles of personal property of any and every kind and nature whatsoever used, attached to, installed or located in or on the Premises, or required for use in or on or in connection with the Premises or the management, maintenance, operation or business thereof and all replacements thereof and accessions thereto to the extent owned by Borrower (hereinafter referred to as the "Equipment"), including, but not limited to, any such item of Equipment now or at any time or times hereafter situated on the Premises and used to supply or otherwise deliver heat, gas, air conditioning, water, light, electricity, power, plumbing, refrigeration, sprinkling, ventilation, mobility, communication, incineration, laundry service and all other related or other such services (all of the immediately above mentioned items of Equipment being deemed to be a part of the Premises, whether physically attached thereto or not);

And all present and future insurance policies in force or effect insuring the Premises, the Rents, the Leases or the Equipment;

And all proceeds of each and every of the foregoing.

Borrower hereby grants to Lender a continuing security interest in (i) that portion of the Mortgaged Property (as hereinafter defined) constituting property or interests in property, whether real or personal, tangible or intangible, now owned or existing and hereafter acquired and arising, which are subject to the priority and perfection of security interest provisions of the Illinois Uniform Commercial Code or any similar and applicable law, statute, code or other governing body of law; and (ii) the Equipment and all proceeds thereof to secure payment of the indebtedness and obligations secured by this Mortgage.

TO HAVE AND TO HOLD the above described property and interests in property ("Mortgaged Property") unto Lender, its successors and assigns, forever;

PROVIDED ALWAYS, that upon full payment of the Note secured hereby, or extensions or renewals thereof, in whole or in part, and payment in full of "Borrower's Liabilities" (as hereinafter defined) and secured hereby, and Borrower faithfully and promptly having complied with and performed "Borrower's Obligations" (as hereinafter defined), then these presents shall be void.

AND THIS INDENTURE FURTHER WITNESSETH:

1. DEFINITIONS

1.1 Wherever used in this Mortgage, "Borrower's Liabilities" means any and all of the following: (i) the payment of any and all monies, including, but not limited to, the payment, when due or declared due in accordance with the terms of the Note, of the principal sum of the Note, together with the interest described therein, now and/or hereafter owed or to become owing by Trustee to Lender under and/or pursuant to the terms and provisions of the Note; (ii) the payment of any and all other debts, claims, obligations, demands, monies, liabilities and/or indebtednesses (of any and every kind or nature) now and/or hereafter owing, arising, due or payable from Borrower to Lender under and/or pursuant to the terms and provisions of this Mortgage; and (iii) the payment of any and all other debts, claims, obligations, demands, monies, liabilities and/or indebtednesses (of any and every kind or nature) now and/or hereafter owing, arising, due or payable from Borrower to Lender, howsoever evidenced, created, incurred, acquired or owing, whether primary, secondary, direct, contingent, fixed or otherwise, and arising under and/or pursuant to the terms and provisions of any other agreements, guaranties, security agreements, financing statements, assignments, assignments of rents and leases, pledge agreements, instruments and/or documents now and/or hereafter executed and delivered by or for Borrower either individually or jointly to Lender (all of said documents including the Note and Mortgage are hereafter referred to herein as the "Loan Documents").

1.2 Wherever used in this Mortgage, "Borrower's Obligations" means the prompt, full and faithful performance, discharge, compliance and observance by Borrower of each and every term, condition, warranty, representation, agreement, undertaking, covenant and provisions to be performed, discharged, observed or complied with by Borrower or any other third party contained in the Loan Documents.

3619811

UNOFFICIAL COPY

1.3 Wherever used in this Mortgage, the term "and/or" means one or the other or both, or any one or all, of the things, events or persons or parties in connection with which the term is used.

2. CONVEYANCE, COLLATERAL ASSIGNMENT OF PERMITS, LICENSES, FRANCHISES AND AGREEMENTS, EXECUTION AND DELIVERY OF DOCUMENTS

2.1 To secure the payment by Borrower of Borrower's Liabilities and the performance by Borrower of Borrower's Obligations, Borrower hereby does grant, give, bargain, confirm, assign, pledge, not over, transfer, sell, convey, remise, release and otherwise mortgage to Lender, its successors and assigns, forever, the Mortgaged Property for the purposes and uses set forth in this Mortgage.

2.2 Borrower, immediately upon request by Lender, at Borrower's sole expense, will or will cause to be made, executed and delivered to Lender, in form and substance acceptable to Lender, all "Documents" (as hereinafter defined) that Lender is advised are and/or deems necessary or appropriate to evidence, document or conclude the transactions described in and/or contemplated by this Mortgage, the Note or the Loan Documents or required to perfect or continue perfected, as valid liens or encumbrances, the liens or encumbrances granted herein or in the Loan Documents by Borrower to Lender upon the Mortgaged Property. As used in this Paragraph, "Documents" means any mortgage, deed of trust or similar instrument, assignment of leases, assignment of rents, note, security agreement, financing statements, assignment of insurance, loss payable clause, mortgage title insurance policy, letters of opinion, waiver letter, stoppage letter, consent letter, non-offset letter, insurance certificate, appraisal, survey and any other similar such agreements, instruments or documents.

2.3 Without limiting Lender's rights and powers hereunder except as herein set forth, from and after a Default under the Note and/or an Event of Default hereunder, Lender shall have the right, in its sole discretion, to exercise all rights of Borrower under all Licenses, franchises and agreements, and to retain, use and enjoy the same, or to sell, assign or transfer the same (with appropriate governmental consents, where necessary) in connection with the enforcement of its rights and remedies under this Mortgage. Borrower hereby irrevocably constitutes and appoints Lender as its agent to demand, receive and enforce Borrower's rights with respect to the Licenses, franchises and agreements, to give appropriate receipts, releases and satisfactions for and on behalf of Borrower and to do any and all acts in the name of Borrower or in the name of Lender with the same effect as if done by Borrower if this assignment had not been made. Lender does not hereby assume any of Borrower's obligations or duties under or in connection with any of said Licenses, franchises and agreements.

3. COVENANTS, WARRANTIES AND REPRESENTATIONS

3.1 Borrower covenants with and warrants and represents to Lender as follows:

(i) Borrower promptly will pay, or cause to be paid, when due or declared due, Borrower's Liabilities and promptly, fully and faithfully will perform, discharge, observe and comply with each and every of Borrower's Obligations.

(ii) Borrower now has and hereafter shall maintain the standing, right, power and lawful authority to own the Mortgaged Property, to carry on the business of and operate the Mortgaged Property, to enter into, execute and deliver this Mortgage, the Note and the Loan Documents to Lender, to encumber the Mortgaged Property to Lender as provided herein or in the Loan Documents and to perform all of Mortgagor's Obligations and to consummate all of the transactions described in or contemplated by this Mortgage, the Note and the Loan Documents.

(iii) The execution, delivery and performance by Borrower of and under this Mortgage, the Note and the Loan Documents does not and will not constitute a violation of any applicable law and does not and will not conflict with or result in a default or breach of or under or an acceleration of any obligation arising, existing or created by or under any agreement, instrument,

3619811

document, mortgage, deed, trust deed, trust agreement, note, judgment, order, award, decree or other restriction to which Borrower or any of the Mortgaged Property is or hereafter shall become a party or by which Borrower or any of the Mortgaged Property is or hereafter shall become bound or any law or regulatory provision now or hereafter affecting Borrower or any of the Mortgaged Property.

(iv) All of the Licenses necessary for the operation of the Mortgaged Property are and shall at all times remain in full force and effect; and, to the best of Borrower's knowledge, all of the Leases are and shall remain genuine, in all respects what they purport to be, free of set-offs, counterclaims or disputes and valid and enforceable in accordance with their terms. Borrower has made no previous assignment of the Licenses, agreements or franchises, and Borrower agrees not to further assign or to otherwise encumber its interest in such Licenses, agreements or franchises during the term of this Mortgage. All parties to the Leases have and shall have the capacity to contract thereunder. Except for security deposits provided for under the Leases, and revealed by Borrower to Lender in writing, no advance payments have been or shall be made thereunder.

(v) There is no litigation, action, claim or proceeding pending or threatened which might, in any way, manner or respect, materially or adversely affect the Mortgaged Property, the operation or the business thereof, Lender's lien thereon, the collectibility of the Note, the ability of Borrower to repay the Note or the financial condition of the Mortgaged Property or the operation or business thereof.

(vi) Borrower and the Mortgaged Property possess and hold and shall maintain adequate properties, interests in properties, leases, licenses, franchises, rights and governmental and other permits, certificates, consents and approvals to conduct and operate the business of the Mortgaged Property.

(vii) There does not exist any default or breach of or under any agreement, instrument or document for borrowed money by which Borrower or the Mortgaged Property is bound or obligated.

(viii) The location, existence, use and condition of the Premises and the Equipment are and shall remain in compliance with all applicable laws, rules, ordinances and regulations, including, but not limited to, building and zoning laws, and all covenants and restrictions of record.

(ix) Borrower, subject to the rights of tenants in possession, is and shall remain in peaceful possession of and will forever warrant and defend the Mortgaged Property from and against any and all claims thereon or thereto of any and all parties.

(x) Borrower will save and hold Lender harmless of and from any and all damage, loss, cost and expense, including, but not limited to, reasonable attorneys' and paralegals' fees, costs and expenses, incurred by reason of or arising from or on account of or in connection with any suit or proceeding, threatened, filed and/or pending, in or to which Lender is or may become or may have to become a party by reason of or arising from or on account of or in connection with Borrower's Liabilities, this Mortgage, the Note or the Loan Documents.

3.2 Borrower covenants with and warrants and represents to Lender as follows:

(i) Borrower is lawfully seized, possessed and the owner of and has good and indefeasible, marketable fee-simple title to the Mortgaged Property, free and clear of all liabilities, claims, debts, exceptions, security interests, assessments, charges, impositions, levies, taxes, liens and all other types of encumbrances (hereinafter referred to as the "Encumbrances") except (I) the Encumbrances of Lender, (II) those Encumbrances described on Exhibit "B" attached hereto and made a part hereof, and (III) existing Leases to a tenant or tenants in possession of all or portions of the Premises.

(ii) Electric, gas, sewer, water facilities and any other necessary utilities are, and at all times hereafter shall be, available in sufficient capacity to service the Mortgaged Property, and any easements necessary to the furnishing of such utilities services have been obtained and duly recorded.

(iii) The proceeds of the loan evidenced by the Note and secured hereby will be used solely for the purposes specified in Illinois Revised Statutes, Chapter 17, Section 6404, and the principal obligation evidenced by the Note constitutes a "business loan" within the definition and purview of said section.

3.3 Borrower covenants with and warrants and represents to Lender as follows:

(i) Borrower will not change the use or character of or abandon the Mortgaged Property and at all times hereafter shall keep the Mortgaged Property in good condition and repair and will not commit or suffer waste and will make all necessary repairs, replacements and renewals (including the replacement of any items of the Equipment) to the Mortgaged Property so that the value and operating efficiency thereof shall at all times hereafter be maintained and preserved. Borrower shall not remove any fixture or demolish any building or improvement located in or on the Premises. Borrower shall pay for and complete, within a reasonable time, any building or improvement at any time in the process of erection upon the Premises, shall refrain from impairing or diminishing the value of the Mortgaged Property and shall make no material alterations to the Mortgaged Property which in the opinion of Lender diminishes its value, and promptly shall repair, restore or rebuild any building or improvement now or hereafter on the Premises which may become damaged or destroyed. Borrower shall comply with all requirements of law and all municipal ordinances governing the Mortgaged Property and the use thereof. Borrower shall permit Lender, and its agents, upon demand, access to and to inspect the Mortgaged Property at all reasonable times. Borrower shall not grant any license or easement burdening the Mortgaged Property or agree to or accept the modification, amendment, or termination of any license or easement affecting the Mortgaged Property without the prior written consent of Lender, which consent shall not be unreasonably withheld.

(ii) Borrower promptly shall pay and discharge, as and when due and payable, before any penalty attaches, all charges, impositions, levies, assessments and taxes (whether general, special or otherwise), water charges, sewer service charges and all other municipal or governmental charges, impositions, levies, assessments and taxes of any kind or nature that may be at any time levied, assessed or imposed upon or against the Mortgaged Property, or any part thereof, and shall deliver to Lender duplicate receipts evidencing payment thereof at least thirty (30) days before delinquency; provided, however, that if Borrower in good faith and by appropriate legal action shall contest the validity of any such item or the amount thereof, and shall have established on its books or by deposit of cash with Lender, as Lender may elect, a reserve for the payment thereof in such amount as Lender may reasonably require, then Borrower shall not be required to pay the item or to produce the required receipts; (a) while the reserve is maintained, and (b) so long as the contest operates to prevent collection, including enforcement of any lien securing payment thereof, is maintained and prosecuted with diligence, and shall not have been terminated or discontinued adversely to Borrower.

(iii) Borrower shall keep the Mortgaged Property free and clear of all Encumbrances (including, but not limited to, mechanics' liens and other similar liens or claims for liens) of any and every kind and nature except those described in Paragraph 3.2(i) above, shall promptly pay or cause to be paid, as and when due and payable or when declared due and payable, any indebtedness which may become or be secured by such an Encumbrance and, immediately upon request by Lender, shall deliver to Lender evidence satisfactory to Lender of the payment and discharge thereof. To prevent an Event of Default hereunder, Borrower may indemnify Lender, by a means determined solely by and acceptable to Lender, against loss by reason of such an Encumbrance which Borrower may desire to contest. If, in accordance with the terms of this Mortgage, Lender makes payment of any such Encumbrance, Lender shall be subrogated to the rights of such claimant, notwithstanding that the Encumbrance may be released of record.

(iv) The Note secured by the Mortgaged Property is not assumable. Without the prior written consent of Lender, Borrower shall not, at any time or times hereafter, (1) sell (including any sale or other transfer pursuant to installment contract for sale or sale under articles of agreement), grant an option to purchase, lease under any master lease, enter into a lease for substantially all of the Mortgaged Property, exchange, assign, convey, further encumber, hypothecate or otherwise transfer the Mortgaged Property and/or any

3619811

part or interest in, the Mortgaged Property, assign, transfer or encumber the beneficial interest in any land trust which holds title to the Mortgaged Property; (2) issue, sell, convey, assign or create a security interest in or otherwise transfer, pledge or hypothecate any of its partnership interest; (3) permit any of its existing partners to sell, assign, transfer or convey any share of their interest in Borrower now owned by any of them; (4) if any general partner ("GP") of Beneficiary is a corporation, any GP shall sell or issue any shares of its capital stock, or any shareholder of any GP shall sell or transfer any shares of capital stock of any GP; (5) obtain any loan or incur any obligation of any character whether direct or indirect, the repayment or performance of which is secured by a lien on the Mortgaged Property or any interest therein. Any of the foregoing acts, occurrences or events described in clauses (1) through (5) shall be deemed to be a "Sale" hereunder and under the Note, and the Loan Documents. Lender may, in its sole and absolute discretion, withhold consent to any Sale, or condition any such consent upon the payment of a fee, the partial payment of the Note, an increase in the interest rate, an increase in payments, a shortening of the term of the Note, an increase in collateral, or all or any of the foregoing requirements, together with any other requirements it may wish to impose. The foregoing list is not intended in any way to limit the requirements Lender may impose nor is it intended to imply that Lender is obligated to consent to any Sale.

(v) All present and future items of fixtures, equipment, furnishings or other tangible personal property (whether or not constituting a part of the Mortgaged Property) related or necessary to or used or useable in connection with any present or future building or improvement on the Premises, or the operation or business thereof, are and will be owned free and clear of all Encumbrances except those described in Paragraph 3.2(i) above and Borrower will not acquire any such property subject to any Encumbrance except those Encumbrances described in Paragraph 3.2(i) above. Within five (5) days after request by Lender, Borrower will execute and deliver to Lender a security agreement and financing statements, in form and substance acceptable to Lender, covering all such property. Borrower and Lender agree that a carbon, photographic or other reproduction of this Mortgage, any security agreement executed by Borrower or a financing statement shall be sufficient as a financing statement.

(vi) Within sixty (60) days of the end of each calendar year there shall be submitted by Beneficiary to Lender, (a) executed annual financial statements of Beneficiary prepared in accordance with generally accepted accounting principles for the prior year and (b) if requested by Lender, a statement of income and expenses for the Premises including a rent-roll for same for the prior year prepared in accordance with generally accepted accounting principles and executed by Beneficiary.

3.4 If Borrower, immediately after written demand from Lender, shall neglect or refuse to keep the Mortgaged Property in good operating condition and repair or to replace or maintain the same as herein agreed, to pay the premiums for the insurance which is required to be maintained hereunder, to pay and discharge all Encumbrances as herein agreed or otherwise defaults in the performance of Borrower's Obligations, Lender, at its sole election, may cause such repairs or replacements to be made, obtain such insurance, pay such Encumbrances or perform such Obligations. Any amounts paid by Lender in taking such action, together with interest thereon at the Default Rate as defined in the Note from the date of Lender's payment thereof until repaid by Borrower to Lender, shall be due and payable by Borrower to Lender upon demand, and, until paid, shall constitute a part of Borrower's Liabilities secured by this Mortgage. Notwithstanding the foregoing, such advances by Lender shall not be deemed to relieve Borrower from an Event of Default hereunder or impair any right or remedy consequent thereon. The exercise of the right to take such action shall be optional with Lender and not obligatory upon Lender and Lender shall not in any case be liable to Borrower for failure or refusal to exercise any such right. In making any payments pursuant to the exercise of any such right, Lender may rely upon any bills delivered to it by Borrower or any such payee and shall not be liable for any failure to make payments in any amounts other than as set forth in any such bills.

3619811

(B) (a) Full power is hereby conferred on Lender:

(i) to settle and compromise all claims under all policies;

(ii) to demand, receive and receipt for all monies becoming due and/or payable under all policies;

(iii) to execute, in the name of Borrower or in the name of Lender, any proof of loss notices or other instruments in connection with all claims under all policies; and

(iv) to assign all policies to any holder of Borrower's Liabilities or to the grantee of the Mortgaged Property in the event of the foreclosure of this Mortgage or other transfer of title to the Mortgaged Property

(b) In the event of payment under any of the policies, the proceeds of the policies shall be paid by the insurer to Lender, and Lender, in its sole and absolute discretion, may:

(i) apply such proceeds, wholly or partially, after deducting all costs of collection, including reasonable attorneys' and paralegals' fees, either

(I) toward the alteration, reconstruction, repair or restoration of the Mortgaged Property or any portion thereof, in which event Lender must give its prior written approval to all plans and specifications for the alteration, reconstruction, repair or restoration of the Mortgaged Property; or

(II) as a payment on account of Borrower's Liabilities (without affecting the amount or time of each subsequent payment required to be made by Borrower to Lender under the Note), whether or not then due or payable;

or

(ii) deliver the same to Borrower.

(c) All insurance proceeds at any time or times hereafter disbursed to or for the benefit of the Borrower in any way, manner or respect affecting, arising from or relating to, the Mortgaged Property, or any portion thereof, are hereby assigned to Lender as additional security for the payment of the Borrower's Liabilities (and for such purpose Borrower hereby grants to Lender a security interest therein).

4.2 All awards now or hereafter made by any public or quasi-public authority to or for the benefit of Borrower in any way, manner or respect affecting, arising from or relating to the Mortgaged Property, or any portion thereof, by virtue of an exercise of the right of eminent domain by such authority (including, but not limited to, any award for taking of title, possession or right of access to a public way, or for any change of grade of streets affecting the Mortgaged Property) hereby are assigned to the Lender as additional security for the payment of Borrower's Liabilities (and for such purpose, Borrower hereby grants to Lender a security interest therein);

Lender shall and hereby is authorized, directed and empowered to collect and receive the proceeds of any such awards from the authorities making the same and to give proper receipts therefor (in Borrower's name, in Lender's name or in both names), and may, in its sole and absolute discretion, use such proceeds for any one or more of the following purposes:

(a) to apply the same, or any part thereof, to Borrower's Liabilities, whether or not then matured and without affecting the amount or time of subsequent payments required to be made by Borrower to Lender under the Note;

(b) to use the same, or any part thereof, to satisfy, perform or discharge any of Borrower's Obligations;

(c) to use the same, or any part thereof, to replace, repair or restore any or all of the Mortgaged Property to a condition satisfactory to Lender, and Lender must give its prior written approval to the plans and specifications for any such replacement, repair or restoration; or

(d) to release the same to Borrower.

Borrower, immediately upon request by Lender, shall make, execute and deliver and/or cause to be made, executed and delivered to and/or for the benefit of Lender any and all assignments and other instruments sufficient to assign, and cause the payment directly to Lender of, all such awards, free and clear of all Encumbrances except those Encumbrances described in Paragraph 3.2(1) above. Notwithstanding any taking by eminent domain, alteration of the grade of any street or other injury to or decrease in value of the Mortgaged Property by any public or quasi-public authority or corporation, Borrower shall continue to pay all of Borrower's Liabilities, as and when due and payable, until any such award or payment shall have been actually received by Lender, and any reduction in Borrower's Liabilities resulting from the application by Lender of such award or payment as herein set forth shall be deemed to take effect only on the date of such receipt. If, prior to the receipt by Lender of such award or payment, the Mortgaged Property shall have been sold upon the exercise of Lender's remedies under this Mortgage, Lender shall have the right to receive such award or payment to the extent of any deficiency found to be due upon such sale, with the lower of legal interest or the Default Rate as described in the Note thereon, whether or not a deficiency judgment on this Mortgage shall have been sought or recovered or denied, and with the reasonable attorneys' and paralegals' fees, costs, expenses and disbursements incurred by Lender in connection with the collection of such award or payment.

F. DEFAULT

5.1 The occurrence or existence of any one or more of the following events shall constitute an "Event of Default" under this Mortgage:

(i) The failure of Borrower to pay, when due or declared due, any of Borrower's Liabilities.

(ii) Failure of Borrower to promptly, fully and faithfully to satisfy, perform, discharge, observe and comply with each and every of Borrower's Obligations, under this Mortgage.

(iii) The occurrence of a Sale as defined in Paragraph 3.3(iv) hereof without the written consent of Lender.

(iv) The occurrence or existence of a "Default" or "Event of Default" as defined in any of the Loan Documents, or a default or event of default under any other agreement, instrument, or document evidencing and/or securing and/or guarantying all or any portion of the indebtedness secured hereby, which is not cured within any applicable grace or cure periods, if any.

5.2 Upon the occurrence or existence of an Event of Default, Lender, after notice and demand insofar as required hereby, or by applicable law, in its sole discretion and at its sole election, without notice of such election, and without further demand, may do any one or more of the following:

(i) Declare all of Borrower's Liabilities immediately due and payable and collect the same at once by foreclosure or otherwise, without notice of broken covenant or condition (and in case of an Event of Default and the exercise of such option, Borrower's Liabilities shall bear interest at the Default Rate as described in the Note from the date of such Event of Default until paid in full).

(ii) Either with or without process of law, forcibly or otherwise, enter upon and take immediate possession of the Mortgaged Property, expel and remove any persons, goods or chattels occupying or located on the Mortgaged Property, receive all Rents, and issue receipts therefor, manage, control and

operate the Mortgaged Property as fully as Borrower might do if in possession thereof, including, without limitation, the making of all repairs and replacements deemed necessary by Lender and the leasing of the same, or any part thereof, from time to time, and, after deducting all reasonable attorneys' and paralegals' fees and all costs and expenses incurred in the protection, care, maintenance, management and operation of the Mortgaged Property, apply the remaining net income, if any, to Borrower's Liabilities or upon any deficiency decree entered in any foreclosure proceeding. At the option of Lender, such entry and taking of possession shall be accomplished either by actual entry and possession or by written notice served personally upon or sent by registered mail to the Borrower at the address of Borrower last appearing on the records of Lender. Borrower agrees to surrender possession of the Mortgaged Property to Lender immediately upon the occurrence of an Event of Default. If Borrower shall remain in physical possession of the Mortgaged Property, or any part thereof, after any such Event of Default, such possession shall be as a tenant of Lender, and Borrower agrees to pay to Lender, or to any receiver appointed as provided below, after such Event of Default, a reasonable monthly rental for the Mortgaged Property, or the part thereof so occupied by the Borrower, to be applied as provided above in the first sentence of the Sub-Paragraph, and to be paid in advance on the first day of each calendar month, and, in default of so doing, Borrower may be dispossessed by the usual summary proceedings. In the event Borrower shall so remain in possession of all, or any part of, the Mortgaged Property, said reasonable monthly rental shall be in amounts established by Lender in its sole discretion. This covenant shall be effective irrespective of whether any foreclosure proceeding shall have been instituted and irrespective of any application for, or appointment of, a receiver.

(iii) File one or more suits at law or in equity for the foreclosure of the lien of this Mortgage and to collect Borrower's Liabilities. At its option, Lender may foreclose the lien of this Mortgage upon less than all of the Mortgaged Property and specifically reserves the right to bring future foreclosure actions with respect to the balance of the Mortgaged Property or portions thereof. In the event of the commencement of any such suit by Lender, Lender shall have the right, either before or after sale, without notice and without requiring bond (notice and bond being hereby waived), without regard to the solvency or insolvency of Borrower at the time of application and without regard to the then value of the Mortgaged Property or whether the same is then occupied, to make application for and obtain the appointment of a receiver for the Mortgaged Property. Such receiver shall have the power to collect the Rents during the pendency of such suit and, in case of a sale and a deficiency, during the full statutory period of redemption or not, as well as during any further times when Borrower, except for the intervention of such receiver, would be entitled to collect the Rents, and shall have all other powers which may be necessary or usual in such cases for the protection, possession, control, management and operation of the Mortgaged Property. The court before which such suit is pending may from time to time authorize the receiver to apply the net income in his hands in payment, in whole or in part, of Borrower's Liabilities. In case of a sale pursuant to foreclosure, the Premises may be sold as one parcel.

(iv) Exercise any other remedies or rights permitted or provided under or by the laws or decisions of the State of Illinois (including all remedies and rights of a secured party under the Uniform Commercial Code of the State of Illinois), accruing to a mortgagee and/or secured party upon a default by a mortgagor and/or debtor or otherwise available in equity or under the Loan Documents.

5.3 Upon the occurrence or existence of an Event of Default under this Mortgage, there will be added to and included as part of Borrower's Liabilities (and allowed in any decree for sale of the Mortgaged Property or in any judgment rendered upon this Mortgage or the Note) the following: The costs, charges, expenses and attorneys' and paralegals' fees and expenses and other fees specified in Paragraph 5.4 below; any and all expenditures which may be paid or incurred by or on behalf of Lender for appraisers' fees, documentary and expert evidence, stenographers' charges, publication costs, fees and expenses for examination of title, title searches, guaranty policies, and similar data and assurances with respect to the title to the Mortgaged Property; interest at the Default Rate, as provided in the Note upon a default thereunder; all prepayment or like premiums, if any, provided for in the Note;

and all other fees, costs and expenses which Lender deems necessary to prosecute any remedy it has under this Mortgage, or to inform bidders at any sale which may be had pursuant to its rights hereunder, of the true condition of title or of the value of the Mortgaged Property. All such costs, charges, expenses, prepayment or like premiums, fees and other expenditures shall be a part of Borrower's Liabilities, secured by this Mortgage, payable on demand and, except for the aforesaid interest at the Default Rate as defined in the Note shall bear interest at the Default Rate as defined in the Note from the date of Lender's payment thereof until repaid to Lender.

5.4 If foreclosure proceedings are instituted upon this Mortgage, or if Lender shall be a party to, shall intervene, or file any petition, answer, motion or other pleading in any suit or proceeding (bankruptcy or otherwise) relating to this Mortgage, the Note, the Loan Documents, or Borrower's Liabilities, or if Lender shall incur or pay any expenses, costs, charges or attorneys' and paralegals' fees and expenses by reason of the employment of counsel for advice with respect to this Mortgage, the Note, the Loan Documents, or any other of Borrower's Liabilities, and whether in court proceedings or otherwise, such expenses and all of Lender's attorneys' and paralegals' fees and expenses shall be part of Borrower's Liabilities, secured by this Mortgage, payable on demand and shall bear interest at the Default Rate as defined in the Note from the date of Lender's payment thereof until repaid to Lender.

5.5 The proceeds of any foreclosure sale of the Mortgaged Property shall be applied and distributed, first, on account of the fees, charges, costs and expenses described in Paragraphs 5.3 and 5.4 above, secondly, to the balance of Borrower's Liabilities, and thirdly, the surplus, if any, to Borrower.

5.6 In the event of the commencement of judicial proceedings to foreclose this Mortgage, Borrower, on behalf of itself, its successors and assigns, and each and every person it may legally bind acquiring any interest in or title to the Mortgaged Property subsequent to the date of this Mortgage: (i) does hereby expressly waive any and all rights of appraisal, valuation, stay, extension and (to the extent permitted by law) redemption from sale under any order or decree of foreclosure of this Mortgage; and (ii) does hereby agree that when sale is had under any decree of foreclosure of this Mortgage, upon confirmation of such sale, the master in chancery or other officer making such sale, or his successor in office, shall be and is authorized immediately to execute and deliver to purchaser at such sale a deed conveying the Mortgaged Property, showing the amount paid therefor, or if purchased by the person in whose favor the order or decree is entered, the amount of his bid therefor.

5.7 Lender shall have the right from time to time to sue for any sums, whether interest, principal or any other sums required to be paid by or for the account of Borrower under the terms of this Mortgage, the Note or the Loan Documents, as the same become due under the Note, or any other of Borrower's Liabilities, shall be due and without prejudice to the right of the Lender thereafter to bring an action of foreclosure, or any other action, for an Event of Default by the Borrower existing at the time such earlier action was commenced.

5.8 No right or remedy of Lender hereunder is exclusive of any other right or remedy hereunder or now or hereafter existing at law or in equity, but is cumulative and in addition thereto and the holder of the Note may recover judgment thereon, issue execution therefor, and resort to every other right or remedy available at law or in equity, without first exhausting or affecting or impairing the security or any right or remedy afforded by this Mortgage. No delay in exercising, or omission to exercise, any such right or remedy will impair any such right or remedy or will be construed to be a waiver of an Event of Default by Borrower hereunder, or acquiescence therein, nor will it affect any subsequent Event of Default hereunder by Borrower of the same or different nature. Every such right or remedy may be exercised independently or concurrently, and when and so often as may be deemed expedient by Lender. No terms or conditions contained in this Mortgage or the Note may be waived, altered or changed except as evidenced in writing signed by Borrower and Lender.

5.9 Lender shall release this Mortgage by proper instrument upon payment and discharge of all of Borrower's Liabilities, including all prepayment or

3619811

like premiums, if any, provided for in the Note and payment of all costs, expenses and fees, including reasonable attorneys' and paralegals' fees, incurred by Lender for the preparation, execution and/or recording of such release.

5.10 Upon occurrence or existence of an Event of Default and following acceleration by Lender of the maturity of Borrower's Liabilities as provided herein, a tender of payment thereof by Borrower, or any other party, or a payment thereof received upon or on account of a foreclosure of this Mortgage or Lender's exercise of any of its other rights or remedies under this Mortgage, the Note, the Loan Documents or under any applicable law or in equity shall be deemed to be a voluntary prepayment made by Borrower of the Note and, therefore, such payment must, to the extent permitted by applicable law, include the interest at the Default Rate payable upon an Event of Default, contained in the Note.

5.11 (A) Any agreements between Borrower and Lender are expressly limited so that, in no event whatsoever, whether by reason of disbursement of the proceeds of the loan evidenced by the Note or otherwise, shall the amount paid or agreed to be paid to Lender for the use, detention or forbearance of the loan proceeds be disbursed exceed the highest lawful rate permissible under any law which a court of competent jurisdiction may deem applicable thereto.

(B) If fulfillment of any provision herein or in the Note, at the time performance of such provision becomes due, involves exceeding such highest lawful rate, then in fact, the obligation to fulfill the same shall be reduced to such highest lawful rate. If by any circumstance Lender shall ever receive as interest an amount which would exceed such highest lawful rate, the amount which may be deemed excessive interest shall be applied to the principal of Borrower's Liabilities and not to interest.

(C) The terms and provisions of this Paragraph shall control all other terms and provisions contained herein, in the Note or in the Loan Documents.

5.12 Any failure of Lender to insist upon the strict performance by Borrower of any of the terms and provisions of this Mortgage, the Loan Documents or the Note shall not be deemed to be a waiver of any of the terms and provisions thereof, and Lender, notwithstanding any such failure, shall have the right at any time or times thereafter to insist upon the strict performance by Borrower of any and all of the terms and provisions thereof to be performed by Borrower. Neither Borrower, nor any other person now or hereafter obligated for the payment of the whole or any part of Borrower's Liabilities, shall be relieved of such obligation by reason of the sale, conveyance or other transfer of the Mortgaged Property or the failure of Lender to comply with any request of Borrower, or of any other person, to take action to foreclose this Mortgage or otherwise enforce any of the provisions of this Mortgage, the Loan Documents or the Note, or by reason of the release, regardless of consideration, of the whole or any part of the security held for Borrower's Liabilities, or by reason of any agreement or stipulation between any subsequent owner or owners of the Mortgaged Property and Lender extending the time of payment or modifying the terms thereof without first having obtained the consent of Borrower or such other person, and, in the latter event, Borrower, and all such other persons, shall remain liable on account of Borrower's Liabilities and shall remain liable to make such payments according to the terms of any such agreement, extension or modification unless expressly released and discharged in writing by Lender. Lender, without notice, may release, regardless of consideration, any part of the security held for Borrower's Liabilities, without, as to the remainder of the security therefor, in any way impairing or affecting the lien of this Mortgage or the priority of such lien over any subordinate lien. Lender may resort for the payment of Borrower's Liabilities to any other security therefor held by the Lender in such order and manner as Lender may elect.

5.13 Upon and after the occurrence or existence of an Event of Default under this Mortgage, Lender shall not be obligated to accept any cure or attempted cure by Borrower, except to the extent required by applicable law or in this Mortgage; however, if Lender accepts such cure, Lender shall not exercise its rights or remedies under Paragraph 5 of this Mortgage unless and until a separate or additional Event of Default then exists hereunder. In the event of any Default, other than nonpayment, Lender will give notice by certified mail, informing Borrower of the Default and give Borrower a 30 day cure period.

3619811

5.14 It is understood and agreed that neither the exercise by Lender of any of its rights or remedies under this Mortgage shall be deemed to make Lender a "mortgagee-in-possession" or otherwise responsible or liable in any manner with respect to the Mortgaged Property or the use, occupancy, enjoyment or operation of all or any portion thereof, unless and until Lender, in person or by agent, assumes actual possession thereof. The appointment of a receiver for the Mortgaged Property by any court at the request of Lender or by agreement with Borrower, or the entering into possession of the Mortgaged Property or any part thereof by such receiver, shall not be deemed to make Lender a mortgagee-in-possession or otherwise responsible or liable in any manner with respect to the Mortgaged Property or the use, occupancy, enjoyment or operation of all or any portion thereof.

6. MISCELLANEOUS

6.1 Every provision for notice, demand or request required in this Mortgage, or by applicable law shall be deemed fulfilled by written notice, demand or request personally served on (or mailed or sent by nationwide commercial courier (such as Federal Express) to, as hereinafter provided) the party entitled thereto or on its successors or assigns. If mailed, such notice, demand or request shall be made certified or registered mail, and deposited in any post office station or letter-box, enclosed in a postage paid envelope addressed to such party at its address set forth below or to such other address as either party hereto shall direct by like written notice and shall be deemed to have been made on the fifth (5th) day following posting as aforesaid. If sent by commercial courier, such notice, demand or request shall be deemed to have been made on the first business day after delivery to the courier. For the purposes herein, notices shall be sent to Borrower and Lender as follows:

To Borrower:

R.E. Loos Construction Co., Inc.
471 Wise Road
Schaumburg, Illinois

To Lender:

USAmeribanc/Woodfield
Higgins & Meacham Roads
Schaumburg, IL 60196

6.2 All the covenants contained in this Mortgage will run with the land. Time is of the essence of this Mortgage and all provisions herein relating thereto shall be strictly construed.

6.3 This Mortgage, and all the provisions hereof, will be binding upon and inure to the benefit of the successors and assigns, or heirs and personal representatives, as the case may be, of the Borrower and Lender.

6.4 This Mortgage, having been negotiated, executed and delivered in the State of Illinois, shall be governed as to validity, interpretation, construction, effect and in all other respects (including the legality of the interest charged under the Note and described herein), by the laws and decisions of the State of Illinois.

6.5 In this Mortgage, the use of the word "including" shall not be deemed to limit the generality of the term or clause to which it has reference, whether or not nonlimiting language (such as "without limitation," or "but not limited to," or words of similar import) is used with reference thereto. The captions and headings of the paragraphs of this Mortgage are for convenience only and are not to be used to interpret, define or limit the provisions hereof.

6.6 Wherever a power of attorney is conferred upon Lender hereunder, it is understood and agreed that such power of attorney is conferred with full power of substitution, and Lender may elect in its sole discretion to exercise such power itself or to delegate such power, or any part thereof to one or more sub-agents.

UNOFFICIAL COPY

6.7 The pleadings of any statute of limitations as a defense to any and all obligations secured by this Mortgage is hereby waived to the fullest extent permitted by law.

6.8 Any provision of this Mortgage which is unenforceable in any state in which this Mortgage may be filed or recorded or is invalid or contrary to the law of such state, or the inclusion of which would affect the validity, legality or enforcement of this Mortgage, shall be of no effect, and in such case all the remaining terms and provisions of this Mortgage shall subsist and be fully effective according to the tenor of this Mortgage, the same as though no such invalid portion had ever been included herein.

6.9 Nothing herein shall be deemed or construed, nor shall the exercise by Lender of any of its rights, privileges, or remedies conferred under the Mortgage, the Note or Loan Documents, to render Lender and Borrower as joint venturers or partners in any way with respect to the Mortgaged Property.

THIS MORTGAGE is executed by the undersigned Trustee, not personally, but as Trustee as aforesaid; and it is expressly understood and agreed by the parties hereto, anything herein to the contrary notwithstanding, that each and all of the covenants, undertakings and agreements herein made are made and intended, not as personal covenants, undertakings and agreements of the Trustee, named and referred to in said Agreement, for the purpose of binding it personally, but this instrument is executed and delivered by USAMERIBANG/ELK GROVE, formerly known as Bank of Elk Grove, as Trustee, solely in the exercise of the powers conferred upon it as such Trustee and no personal liability or personal responsibility is assumed by, or shall at any time be asserted or enforced against USAMERIBANG/ELK GROVE, formerly known as Bank of Elk Grove, its agents or employees, on account hereof, or on account of any covenant, undertaking or agreement herein or in the Note contained, either express or implied, all such personal liability, if any, being hereby expressly waived and released by Lender or holder or holders of said Note, and by all persons claiming by or through or under said parties or the holder or holders, owner or owners of the Note and by every person now or hereafter claiming any right or security hereunder.

Anything herein contained to the contrary notwithstanding, it is understood and agreed that USAMERIBANG/ELK GROVE, formerly known as Bank of Elk Grove, personally, shall have no obligation to see to the performance or non-performance of any of the covenants herein contained and shall not be personally liable for any action or non-action taken in violation of any of the covenants herein contained.

IN WITNESS WHEREOF, USAMERIBANG/ELK GROVE, formerly known as Bank of Elk Grove, not personally, but as Trustee as aforesaid, has caused these presents to be signed and its corporate seal to be hereunto affixed the day and year first above written.

USAMERIBANG/ELK GROVE, formerly known as Bank of Elk Grove, not personally but as Trustee under a Trust Agreement dated July 1, 1988, and known as Trust No. 2404

ATTEST:

By: *Dolores Hardwick*

Loan Officer

Its: _____

By: *Walter J. Casanova*

Trust Officer

Its: _____

3519811

UNOFFICIAL COPY

EXHIBIT "A"

LEGAL DESCRIPTION OF THE MORTGAGED PROPERTY:

THE EASTERLY 156 FEET OF THE WESTERLY 416.7 FEET OF LOT 5 IN BLOCK 4 IN CENTEX SCHAUMBURG INDUSTRIAL PARK UNIT 126 BEING A SUBDIVISION OF THE NORTH 1/2 OF SECTION 33, TOWNSHIP 41 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF REGISTERED IN THE OFFICE OF THE REGISTRAR OF TITLES IN COOK COUNTY, ILLINOIS ON JANUARY 29, 1905 AS DOCUMENT 2792969, IN COOK COUNTY, ILLINOIS.

Permanent Real Estate Tax Number: 07-33-203-042

Common Address: 631-653 Morse Avenue, Schaumburg, Illinois

Property of Cook County Clerk's Office

3619811

UNOFFICIAL COPY

0 3 3 1 9 ' 8 1 1

Property of Cook County Clerk's Office

UNOFFICIAL COPY

STATE OF ILLINOIS, COOK County ss:

I, Patricia A. Dunleavy, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Nancy J. Czarnik of USAmeribanc/Elk Grove

and ~~Cheryl XXXX Cook~~ Dolores Hardwick of said Bank, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Trust Officer and Loan Officer, respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said Bank, as Trustee as aforesaid, for the uses and purposes therein set forth; and the said Loan Officer then and there acknowledged that she, as custodian of the Seal of said Bank, did affix the seal to said instrument as her free and voluntary act and as the free and voluntary act of said Bank as Trustee as aforesaid, for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this 18th day of May, 19 87.

My Commission Expires: May 15, 1988

Patricia A. Dunleavy
Notary Public

Property of Cook County Clerk's Office

3619811

CHICAGO TITLE INS

7D-49-805

IN DUPLICATE

3619811

REGISTERED INSTRUMENTS
MAY 11 1987
CHICAGO TITLE INS

3619811