

UNOFFICIAL COPY

0 3 7 0 3 3 0 5 3 7 2 3 4 1 5

EXHIBIT A

LEGAL DESCRIPTIONS

Parcel 1 - Commonly known as 4601-03 N. Malden, Chicago, IL.

(14-17-110-012) All JAO
Lot 121 and the South 25 feet of Lot 122 in Sheridan Drive Subdivision, being a Subdivision of the North 3/4 of the East 1/2 of the North West 1/4 of Section 17, Township 40 North, Range 14, East of the Third Principal Meridian, together with the part of the West 1/2 of the North West 1/4 which lies North of the South 800 feet thereof and East of Green Bay Road, in Cook County, Illinois.

Parcel 2 - Commonly known as 4649-53 N. Malden, Chicago, IL.

(14-17-110-002) JAO
Lot 131 in Sheridan Drive a Subdivision of the North 3/4 of the East 1/2 of the Northwest 1/4 of Section 17, Township 40 North, range 14, East of the Third Principal Meridian, together with part of the West 1/2 of Northwest 1/4 which lies North of the South 800 feet and East of Green Bay Road, in Cook County, Illinois.

Parcel 3 - Commonly known as 4451-57 N. Malden, Chicago, IL.

(14-17-124-001) All JBO
Lots 47 and 48 in Subdivision of the South 1/2 of East 1/2 of the North West 1/4 of Section 17, Township 40 North, Range 14 (except the East 569.25 feet thereof) in Cook County, Illinois.

Parcel 4 - Commonly known as 4701-03 N. Malden, Chicago, IL.

(14-17-104-012) JAO
Lot 133 in Sheridan Drive Subdivision, being a Subdivision of the North 3/4 of the East 1/2 of the North West 1/4 of Section 17, Township 40 North, Range 14, East of the Third Principal Meridian, together with that part of the West 1/2 of the said North West 1/4 of Section which lies North of the South 800 feet thereof and East of Green Bay Road, in Cook County, Illinois.

Parcel 5 - Commonly known as 4501-11 N. Malden, Chicago, IL.

(14-17-117-007) All JAO
Lots 109, 110, 111 and 112 in Sheridan Drive Subdivision, being a Subdivision in the North 3/4 of the East 1/2 of the Northwest 1/4 of Section 17, Township 40 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

3572215

UNOFFICIAL COPY

0 3 07 33 50 73 22 43 1 5

EXHIBIT A - continued

Parcel 6 - Commonly known as 4716-24 N. Beacon, Chicago, IL.

(14-17-102-023) All CAO *AP*

Lots 224 and 225 in Sheridan Drive Subdivision of the North 3/4 of the East 1/2 of the Northwest 1/4 of Section 17, Township 40 North, Range 14, East of the Third Principal Meridian, together with the part of the West 1/2 of said Northwest 1/4 of said Section 17, which lies North of the South 800 feet thereof and East of Green Bay Road, in Cook County, Illinois.

Parcel 7 - Commonly known as 4656 N. Magnolia, Chicago, IL.

(14-17-110-011) 1 AD *AP*

Lot 85 in Sheridan Drive Subdivision, being a Subdivision of the North 3/4 of the East 1/2 of the North West 1/4 of Section 17, Township 40 North, Range 14, East of the Third Principal Meridian, together with that part of the West 1/2 of said North West 1/4 of Section, which lies North of the South 800 feet thereof, and East of the Green Bay Road, in Cook County, Illinois.

Parcel 8 - Commonly known as 4510 N. Beacon, Chicago, IL.

(14-17-115-023) OKO *AP*

1953/173
Lot 250 in the Resubdivision of Lots 249, 250 and 251 in Sheridan Drive, being a Subdivision of the North 3/4 of the East 1/2 of the Northwest 1/4 together with that part of the West 1/2 of said Northwest 1/4 which lies North of the South 800 feet thereof and East of Green Bay Road in Section 17, Township 40 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

3572415

UNOFFICIAL COPY

M O R T G A G E

(Trustee Form)

3730323

Handwritten signature

THIS INDENTURE made as of August 1, 1988, by and between HARRIS TRUST AND SAVINGS BANK, an Illinois banking association duly authorized to accept and execute trusts in the State of Illinois, not personally, but as Trustee under the provisions of a deed in trust, duly recorded and delivered to said association in pursuance of Trust Agreement dated June 23, 1986 and known as Trust No. 43652, herein referred to as "Mortgagor", and CITICORP SAVINGS OF ILLINOIS, a Federal Savings and Loan Association, or its successors and assigns, herein referred to as "Mortgagee",

W I T N E S S E T H:

THAT, WHEREAS Mortgagor has concurrently herewith executed and delivered a promissory note bearing even date herewith ("Note") in the principal sum of SIX MILLION THREE HUNDRED THOUSAND DOLLARS (\$6,300,000.00), made payable to the order of the Mortgagee in and by which the Mortgagor promises to pay out of that portion of the trust estate subject to said Trust Agreement and hereinafter specifically described, (1) any additional advances and escrows, with interest thereon as provided in the Note, made by the Mortgagee to protect the security hereunder, at any time before the release and cancellation of this Mortgage, and (2) the principal sum and interest thereon at the rate and at the times and amounts as provided in the Note, to be applied first to advances and escrows, then to interest, and the balance to principal until said indebtedness is paid in full. All of said principal and interest are made payable at such place as the holders of the Note may, from time to time, in writing appoint, and in absence of such appointment, then at the office of CITICORP SAVINGS OF ILLINOIS, in Chicago, Illinois.

3730323

NOW, THEREFORE, the Mortgagor to secure the payment of all sums payable under the Note and all sums payable in accordance with the terms, provisions and limitations of this Mortgage, and also in consideration of the sum of one Dollar (\$1.00) in hand paid, the receipt whereof is hereby acknowledged, does by these presents MORTGAGE, GRANT, REMISE, RELEASE, ALIEN and CONVEY unto the Mortgagee, its successors and assigns, the following described real estate and all of its estate, right, title and interest therein, situate, lying and being in the City of Chicago, County of Cook, and State of Illinois, to-wit:

(SEE EXHIBIT A ATTACHED HERETO AND MADE A PART HEREOF)

and commonly known as:

PARCEL 1	4601-03	N. Malden	14-17-110-012
PARCEL 2	4649-53	N. Malden	14-17-110-002
PARCEL 3	4451-57	N. Malden	14-17-124-001
PARCEL 4	4701	N. Malden	14-17-104-012
PARCEL 5	4501-09	N. Malden	14-17-117-007
PARCEL 6	4716-24	N. Beacon	14-17-102-023
PARCEL 7	4656	N. Magnolia	14-17-110-013
PARCEL 8	4510	N. Beacon	14-17-115-023

and having the real estate index numbers as set forth above, which, with the property hereinafter described, is referred to herein as the "premises".

This instrument was prepared by: and mail to -
Jonathan A. Hattenbach, Esq.
Portes, Sharp, Herbst & Kravets, Ltd.
333 West Wacker Drive, Suite 500
Chicago, Illinois 60606
(312) 372-1555

717659701
Legal description affects property on Certificate # 1383173 and other property *Handwritten signature*

9988

UNOFFICIAL COPY

0 3 7 3 9 3 2 3

TOGETHER with all buildings, improvements, tenements, easements, fixtures, and appurtenances thereto belonging, and all rents, issues and profits thereof for so long and during all such times as Mortgagor may be entitled thereto (which are pledged primarily and on a parity with said real estate and not secondarily), and all shades, awnings, venetian blinds, screens, screen doors, storm doors and windows, stoves and ranges, curtain fixtures, partitions, attached floor covering, now or hereafter therein or thereon and all fixtures, apparatus, equipment or articles now or hereafter therein or thereon used to supply heat, gas, air conditioning, water, light, power, sprinkler protection, waste removal, refrigeration (whether single units or centrally controlled), and ventilation, including (without restricting the foregoing) all other fixtures, apparatus, equipment and articles of the type and character customarily furnished by landlords to tenants or occupants of unfurnished apartment properties in the municipality in which the premises are located.

TO HAVE AND TO HOLD the premises unto the said Mortgagee, its successors and assigns, forever, for the purposes and uses herein set forth, free from all rights and benefits under any statute of limitation and under the Homestead Exemption Laws of the State of Illinois, which said rights and benefits the Mortgagor does hereby release and waive.

IT IS FURTHER UNDERSTOOD AND AGREED THAT:

1. Maintenance, Repair and Restoration of Improvements, Payment of Prior Liens, Etc. Mortgagor shall (a) promptly repair, restore or rebuild any buildings or improvements now or hereafter on the premises which may become damaged or be destroyed; (b) keep said premises in good condition and repair, without waste, and free from mechanics' liens or other liens or claims for lien not expressly subordinated to the lien hereof; (c) pay when due any indebtedness which may be secured by a lien or charge on the premises superior to the lien hereof, and upon request exhibit satisfactory evidence of the discharge of such prior lien to Mortgagee; (d) complete within a reasonable time any building or buildings now or at any time in process of erection upon said premises; (e) comply with all requirements of law, municipal ordinances, or restrictions of record with respect to the premises and the use thereof; (f) make no material alterations in said premises except as required by law or municipal ordinance; (g) suffer or permit no change in the general nature of the occupancy of the premises, without Mortgagee's written consent; (h) initiate or acquiesce in no zoning reclassification, without Mortgagee's written consent; (i) pay each item of indebtedness secured by this Mortgage when due according to the terms hereof or of the Note; (j) not suffer or permit any unlawful use of or any nuisance to exist upon the premises; (k) not diminish or impair the value of premises or the security intended to be effected by virtue of this Mortgage by any act or omission to act; (l) appear in and defend any proceeding which in the opinion of the Mortgagee affects its security hereunder, and pay all costs, expenses and attorney's fees incurred or paid by the Mortgagee in any proceeding in which Mortgagee may participate in any capacity by reason of this Mortgage; (m) not suffer or permit, without Mortgagee's written consent, (i) any alterations, additions to, demolition or removal of any of the improvements, apparatus, fixtures or equipment now or hereafter upon the premises, (ii) a sale, assignment or transfer of any right, title or interest in and to any of the improvements, apparatus, fixtures or equipment which may be found in or upon the premises, (iii) any change in the nature or character of the operation of the premises which will increase the intensity of the use thereof, and (iv) a change or alteration of the exterior and interior structural arrangement of the premises, including, without limitation, its walls, rooms and halls.

3730323

2. [Intentionally Deleted].

3. Sale or Transfer of Premises or Interest Therein.

Mortgagor agrees and understands that it shall constitute an event of default under this Mortgage and the Note entitling the remedies herein and in the Note to be exercised if (a) the Mortgagor, or any beneficiary of the Mortgagor, shall convey title to, or beneficial interest in, or otherwise suffer or permit any equitable or beneficial interest in the premises to become vested in any person or persons, firm or corporation or other entity other than the Mortgagor or the present beneficiary or beneficiaries, (b) the Mortgagor, or any beneficiary of the Mortgagor, allows any lien or security interest to attach to the premises or the beneficial interest in the premises other than the lien of this Mortgage (excluding taxes and assessment not yet due and payable) (c) any articles of agreement for deed or other installment contract for deed, title or beneficial interest or land contract in the premises are entered into, or (d) any partnership interest of a partnership, if any, owning all or a portion of the beneficial interest in the Mortgagor is conveyed, transferred, or hypothecated, in whole or in part, or (e) any stock of a corporation, if any, owning all or a portion of the beneficial interest in the Mortgagor is conveyed, transferred, or hypothecated, in whole or in part; provided, however, that nothing herein shall be deemed to cause an event of default in connection with the Subordinated Mortgages to Eliot Savings Bank and Uptown Associates.

4. Payment of Taxes. Mortgagor shall pay before any penalty attaches all general taxes, and shall pay special taxes, special assessments, water charges, sewer service charges, and other charges against the premises when due, and shall, upon written request, furnish to Mortgagee duplicate receipts therefor. To prevent default hereunder Mortgagor shall pay in full under protest, in the manner provided by statute, any tax or assessment which Mortgagor may desire to contest.

5. Insurance. Mortgagor shall keep all buildings and improvements now or hereafter situated on said premises insured, until the indebtedness secured by this Mortgage is fully paid, or in the case of foreclosure, until the expiration of any period of redemption, against loss or damage by fire and such other hazards as may reasonably be required by Mortgagee, including, without limitation on the generality of the foregoing, war damage insurance whenever in the opinion of Mortgagee such protection is necessary. Mortgagor shall also provide liability insurance with such limits for personal injury and death and property damage as Mortgagee may require and if required by Mortgagee, flood and rents (which will assure coverage for loss of rental income for twelve (12) consecutive months) insurance. All policies of insurance to be furnished hereunder shall be in forms, companies and amounts satisfactory to Mortgagee, (but in no event less than the amount needed to pay in full the indebtedness secured hereby) with mortgagee clauses attached to all policies in favor of and in form satisfactory to Mortgagee, including a provisions requiring that the coverage evidenced thereby shall not be terminated or materially modified without ten (10) days' prior written notice to the Mortgagee. Mortgagor shall deliver all policies, including additional and renewal policies, to Mortgagee, and, in the case of insurance about to expire, shall deliver renewal policies not less than ten (10) days prior to the respective dates of expiration.

6. Tax and Insurance Deposits. In order to more fully protect the security of this Mortgage and to provide security to the Mortgagee for the payment of real estate taxes, assessments (general and special), water and sewer charges, and insurance premiums for all insurance applicable to the premises, Mortgagor agrees to pay to Mortgagee, at such place as Mortgagee may from time to time in writing appoint and in the absence of such

appointment, then at the office of the Mortgagee in Chicago, Illinois, each month at the due date for the monthly installments of principal and interest as provided for under the Note (in addition to paying the principal and interest provided for under the Note) in an amount as determined by Mortgagee, in such manner as the Mortgagee may prescribe, to provide security for the payment of the real estate taxes, assessments (general and special), water and sewer charges, and insurance premiums for all insurance applicable to the premises. Mortgagor shall deposit at least 30 days prior to the due date of any such real estate tax, assessment (general and special), water or sewer charges, or insurance premiums or interest or amortization payment, such additional amount as may be necessary to provide Mortgagee with sufficient funds in such deposit account to pay each such item at least 30 days in advance of the due date thereof.

If at any time the amount of the real estate taxes, assessments (general or special), water and sewer charges or insurance premiums are increased or Mortgagee receives information that the same will be increased, and if the monthly deposits then being made by Mortgagor for this purpose (if continued) would not make up a fund sufficient in the opinion of the Mortgagee to pay such item 30 days prior to its due date, said monthly deposits shall thereupon be increased and Mortgagor shall deposit immediately with Mortgagee on demand such additional sums as are determined by the Mortgagee so that the moneys then on hand for the payment of said item plus the increased monthly payments and such additional sums demanded shall be sufficient so that Mortgagee shall have received from Mortgagor adequate amounts to pay such item at least 30 days before the same becomes due and payable. For the purpose of determining whether Mortgagee has on hand sufficient moneys to pay any particular item at least 30 days prior to the due date therefor, deposits for each item shall be treated separately, it being the intention that Mortgagee shall not be obligated to use moneys deposited for the payment of an item, not yet due and payable for the payment of an item that is due and payable.

Notwithstanding the foregoing, it is understood and agreed (a) that deposits provided for hereunder may be held by Mortgagee in a single noninterest bearing account, and (b) that Mortgagee at its option may, if Mortgagor fails to make any deposit required hereunder, use deposits for one item for the payment of another item then due and payable. All such deposits shall be held in escrow by Mortgagee and shall be applied by Mortgagee to the payment of the said real estate taxes, assessments (general and special), water and sewer charges, and insurance premiums, when the same become due and payable. The said deposits shall bear no interest. Failure to pay any of the aforesaid monthly deposits for 10 days after they are due or failure to pay any of the aforesaid additional deposits for 5 days after demand by Mortgagee, shall be an event of default under the Note secured by this Mortgage and under this Mortgage, in which event all remedies under the Note secured by this Mortgage and this Mortgage may be immediately exercised by the Mortgagee and, further, all moneys on hand in the deposit fund may, at the option of Mortgagee, be applied in reduction of the indebtedness under the Note secured by this Mortgage.

If the funds so deposited exceed the amount required to pay such taxes, assessments (general and special), water and sewer charges, and insurance premiums for any year, the excess shall be applied on a subsequent deposit or deposits. The Mortgagor further agrees that Mortgagee shall not be required to make payments for which insufficient funds are on deposit with the Mortgagee. Mortgagor agrees that nothing herein contained shall be construed as requiring the Mortgagee to advance other monies for such purpose and the Mortgagee shall not incur any liability for anything it may do or omit to do.

Upon an assignment of this Mortgage, Mortgagee shall have the right to pay over the balance of such deposits in its possession to the assignee and Mortgagee shall thereupon be completely released from all liability with respect to such deposits and Mortgagor shall look solely to the assignee or transferee with respect thereto. This provision shall apply to every transfer of such deposits to a new assignee. Upon full payment of the indebtedness under the Note secured by this Mortgage and the Mortgage (or at any prior time at the election of the then holder of the Note and this Mortgage) the balance of the deposits in its possession shall be paid over to the record owner of the premises at the time of payment and no other party shall have any right or claim thereto in any event.

7. Mortgagee's Interest In and Use of Deposits. In the event of a default in any of the provisions contained in this Mortgage or in the Note, the Mortgagee may at its option, without being required to do so, apply any moneys at the time on deposit pursuant to paragraph 6 hereof, as any one or more of the same may be applicable, on any of Mortgagor's obligations herein or in the Note contained, in such order and manner as the Mortgagor may elect. When the indebtedness secured hereby has been fully paid, any remaining deposits shall be paid to Mortgagor or to the then owner or owners of the mortgaged premises. Such deposits are hereby pledged as additional security for the indebtedness hereunder and shall be held in trust to be irrevocably applied by the Mortgagee for the purposes for which made hereunder and shall not be subject to the direction or control of the Mortgagor; provided, however, that the Mortgagee shall not be liable for any failure to apply to the payment of taxes, assessments, water and sewer charges and insurance premiums any amount so deposited unless Mortgagor, while not in default hereunder, shall have requested Mortgagee in writing not less than thirty (30) days prior to the due date therefor to make application of such funds to the payment of the particular taxes, assessments or insurance premiums for payment of which they were deposited, accompanied by the bills for such taxes, assessments and insurance premiums.

8. Mortgagee's Right to Act. If Mortgagor fails to pay any claim, lien or encumbrance which shall have a prior lien to the lien of this indenture, or to pay, when due, any tax or assessment, or any insurance premium, or to keep the premises in repair, as aforesaid, or shall commit or permit waste, or if there be commenced any action or proceeding affecting the premises or the title thereto, then Mortgagee, at its option, may pay such claim, lien, encumbrance, tax, assessment or premium, with right of subrogation thereunder, may procure such abstracts or other evidence of title as it deems necessary, may make such repairs and take such steps as it deems advisable to prevent or cure such waste, and may appear in any such action or proceeding and retain counsel therein, and take such action therein as Mortgagee deems advisable, and for any of such purposes Mortgagee may advance such sums of money as it deems necessary. Mortgagee shall be the sole judge of the legality, validity and priority of any such claim, lien, encumbrance, tax, assessment and premium, and of the amount necessary to be paid in satisfaction thereof. Mortgagor will pay to Mortgagee, immediately and without demand, all sums of money advanced by Mortgagee pursuant to this paragraph, together with interest on each such advance at the rate set forth in the Note, and all such sums and interest thereon shall be secured hereby.

9. Adjustment of Losses with Insurer and Application of Proceeds of Insurance. In case of loss, the Mortgagee (or after entry of decree of foreclosure, purchaser at the sale, or the decree creditor, as the case may be) is hereby authorized either (a) to settle, collect, compromise and adjust, in its discretion any claim under such insurance policies without consent of Mortgagor, or (b) to allow Mortgagor to agree with the insurance company or companies on the amount to be paid upon the loss. In

either case Mortgagee is authorized to collect and receipt for any such insurance money. Mortgagor agrees to sign, upon demand by Mortgagee, all receipts, vouchers and releases required of him by the companies. If (a) Mortgagor is obligated to restore or replace the damaged or destroyed buildings or improvements under the terms of any lease or leases which are or may be prior to the lien of this Mortgage, (b) such damage or destruction does not result in cancellation or termination of such lease, (c) the insurers do not deny liability as to the insureds, and (d) such proceeds are sufficient to restore or replace the damaged or destroyed buildings or improvements in the judgment of Mortgagee, such proceeds, after deducting therefrom any expenses incurred in the collection thereof, shall be used to reimburse Mortgagor for the cost of rebuilding or restoration of buildings and improvements of said premises. In all other cases, such insurance proceeds may, at the option of Mortgagee, either be applied in reduction of the indebtedness secured hereby, whether due or not, or be held by the Mortgagee and used to reimburse Mortgagor for the cost of the rebuilding or restoration of buildings or improvements on said premises. The buildings and improvements shall be so restored or rebuilt as to be of at least equal value and substantially the same character as prior to such damage or destruction. In the event Mortgagor is entitled to reimbursement out of insurance proceeds, such proceeds shall be made available, from time to time, upon the Mortgagee being furnished with satisfactory evidence of the estimated cost of completion thereof and with such architect's certificates, waivers of lien, contractors' sworn statements and other evidence of cost and of payments as the Mortgagee may reasonably require and approve, and if the estimated cost of the work exceeds ten percent (10%) of the original principal amount of the indebtedness secured hereby, with all plans and specifications for such rebuilding or restoration as the Mortgagee may reasonably require and approve. No payment made prior to the final completion of the work shall exceed ninety percent (90%) of the value of the work performed, from time to time, and at all times the undischarged balance of said proceeds remaining in the hands of the Mortgagee shall be at least sufficient to pay for the cost of completion of the work free and clear of liens.

In the case of loss after foreclosure proceedings have been instituted, the proceeds of any such insurance policy or policies, if not applied as aforesaid in rebuilding or restoring the buildings or improvements, shall be used to pay the amount due in accordance with any decree of foreclosure that may be entered in any such proceedings, and the balance, if any, shall be paid to the owner of the equity of redemption if he shall then be entitled to the same or as the court may direct. In case of the foreclosure of this mortgage, the court in its decree may provide that the mortgagee's clause attached to each of said insurance policies may be canceled and that the decree creditor may cause a new loss clause to be attached to each of said policies making the loss thereunder payable to said creditor; and any such foreclosure decree may further provide, that in case of one or more redemptions under said decree, pursuant to the statute in such case made and provided, then and in every such case, each successive redeemer may cause the preceding loss clause attached to each insurance policy to be canceled and a new loss clause to be attached thereto, making the loss thereunder payable to such redeemer. In the event of foreclosure sale, Mortgagee is hereby authorized, without the consent of Mortgagor, to assign any and all insurance policies to the purchaser at the sale, or to take such other steps as Mortgagee may deem advisable, to cause the interest of such purchaser to be protected by any of the said insurance policies.

10. Stamp, Transfer or Revenue Tax. If, by the laws of the United States of America, or of any state or political subdivision thereof having jurisdiction over the Mortgagor or the premises,

any tax is due or becomes due in respect of the issuance of the Note or this Mortgage or the recordation thereof, the Mortgagor covenants and agrees to pay such tax in the manner required by any such law. The Mortgagor further covenants to hold harmless and agrees to indemnify the Mortgagee, its successor or assigns, against any liability incurred by reason of the imposition of any such tax.

11. Prepayment. At such time as the Mortgagor is not in default either under the terms of the Note or under the terms of this Mortgage, the Mortgagor shall have such privilege of making prepayments on the principal of the Note (in addition to the required payments) as may be provided in the Note, and in accordance with the terms, conditions, and payment of the penalties set forth in the Note.

12. Effect of Extensions of Time. If the payment of said indebtedness or any part thereof be extended or varied or if any part of the security be released, all persons now or at any time hereafter liable therefor, or interested in said premises, shall be held to assent to such extension, variation or release, and their liability and the lien and all provisions hereof shall continue in full force, the right of recourse against all such persons being expressly reserved by the Mortgagee, notwithstanding such extension, variation or release.

13. Effect of Changes in Laws Regarding Taxation. In the event of the enactment after this date of any law of the state in which the premises are located deducting from the value of land for the purpose of taxation any lien hereon, or imposing upon the Mortgagee the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Mortgagor, or changing in any way laws relating to the taxation of mortgages or debts secured by mortgages or the mortgagee's interest in the property, or the manner of collection of taxes, so as to affect this Mortgage or the debt secured hereby or the holder thereof, then, and in any such event, the Mortgagor, upon demand by the Mortgagee, shall pay such taxes or assessments, or reimburse the Mortgagee therefor; provided, however, that if in the opinion of counsel for the Mortgagee (a) it might be unlawful to require Mortgagor to make such payment or (b) the making of such payment might result in the imposition of interest in excess of the maximum amount permitted by law, then and in such event, the Mortgagee may elect, by notice in writing given to the Mortgagor, to declare all of the indebtedness secured hereby to be and become due and payable sixty (60) days from the date of giving of such notice.

14. Mortgagee's Performance of Defaulted Acts. In case of default hereunder, Mortgagee may, but need not, make any payment or perform any act herein required of Mortgagor in any form and manner deemed expedient by Mortgagee, and may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting said premises or contest any tax or assessment. All moneys paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including attorneys' fees, and any other moneys advanced by Mortgagee to protect the mortgaged premises and the lien hereof, shall be so much additional indebtedness secured hereby, and shall become immediately due and payable without notice and with interest thereon at the rate of interest then applicable to the indebtedness secured by this Mortgage. Inaction of Mortgagee shall never be considered as a waiver of any right accruing to it on account of any default on the part of Mortgagor.

15. Mortgagee's Reliance on Tax and Insurance Bills, Etc. Mortgagee in making any payment is hereby authorized (a) to pay

any taxes, assessments and insurance premiums, according to any bill, statement or estimate procured from the appropriate public office or vendor without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, insurance premiums, sale, forfeiture, tax lien or title or claim thereof; or (b) to purchase, discharge, compromise or settle any other prior lien, without inquiry as to the validity or amount of any claim for lien which may be asserted.

16. Acceleration of Indebtedness in Case of Default. If (a) default be made for fifteen (15) days in the due and punctual payment of the Note, or any installment due in accordance with the terms thereof, either of principal or interest; or (b) the Mortgagor shall file a petition in voluntary bankruptcy under the United States Bankruptcy Code or any similar law, state or federal, whether now or hereafter existing, or an answer admitting insolvency or inability to pay its debts, or fail to obtain a vacation or stay of involuntary proceedings within ten (10) days, as hereinafter provided; or (c) the Mortgagor shall be adjudicated a bankrupt, or a trustee or a receiver shall be appointed for the Mortgagor or for all of its property or the major part thereof in any involuntary proceeding, or any court shall have taken jurisdiction of the property of the Mortgagor or the major part thereof in any involuntary proceeding for the reorganization, dissolution, liquidation or winding up of the Mortgagor, and such trustee or receiver shall not be discharged or such jurisdiction relinquished or vacated or stayed on appeal or otherwise stayed within ten (10) days; or (d) the Mortgagor shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due, or shall consent to the appointment of a receiver or trustee or liquidator of all of its property or the major part thereof; or (e) default shall be made in the due observance or performance of any other of the covenants, agreements or conditions hereinbefore or hereinafter contained, required to be kept or performed or observed by the Mortgagor and the same shall continue for three (3) days, then and in every such case the whole of said principal sum hereby secured shall, at once, at the option of the Mortgagee, become immediately due and payable together with accrued interest thereon, without notice to Mortgagor at the default rate of interest as specified in the Note.

17. Foreclosure: Expense of Litigation. When the indebtedness hereby secured, or any portion thereof, shall become due, whether by acceleration or otherwise, Mortgagee shall have the right to foreclose the lien hereof for such indebtedness or part thereof. In any suit to foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for attorneys' fees, appraiser's fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, Torrens certificates, and similar data and assurances with respect to title as Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the premises. All expenditures and expenses of the nature in this paragraph mentioned, and such expenses and fees as may be incurred in the protection of said premises and the maintenance of the lien of this Mortgage, including the fees of any attorney employed by Mortgagee in any litigation or proceeding affecting this Mortgage, the Note or said premises, including probate and bankruptcy proceedings, or in preparations for the commencement or defense of any proceeding or threatened suit or proceedings, whether or not actually commenced, shall be immediately due and payable by Mortgagor, with interest thereon at the rate applicable to the

3730323

indebtedness secured by this Mortgage and the same shall be secured by this Mortgage.

18. Application of Proceeds of Foreclosure Sale. The proceeds of any foreclosure sale of the premises shall be distributed and applied in the following order of priority: first, on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in the preceding paragraph hereof; second, all other items which under the terms hereof constitute secured indebtedness additional to that evidenced by the Note, with interest thereon as herein provided; third, all principal and interest remaining unpaid on the Note; fourth, any overplus to Mortgagor, its successors or assigns, as their rights may appear.

19. Appointment of Receiver. Upon, or at any time after the filing of a complaint to foreclose this Mortgage, the court in which such complaint is filed may appoint a receiver of said premises. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of Mortgagor at the time of application for such receiver and without regard to the then value of the premises or whether the same shall be then occupied as a homestead or not and the Mortgagee hereunder or any holder of the Note may be appointed as such receiver. Such receiver shall have power to collect the rents, issues and profits of said premises during the pendency of such foreclosure suit and in case of a sale and a deficiency, during the full statutory period of redemption, whether there be redemption or not, as well as during any further times when Mortgagor, except for the intervention of such receiver, would be entitled to collect such rents, issues and profits, and all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the premises during the whole of said period. The court from time to time may authorize the receiver to apply the net income in his hands in payment in whole or in part of: (a) the indebtedness secured hereby, or by any decree foreclosing this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to foreclosure sale; (b) the deficiency in case of a sale and deficiency.

20. Assignment of Rents and Leases. To further secure the indebtedness secured hereby, Mortgagor does hereby sell, assign and transfer unto the Mortgagee all the rents, issues and profits now due and which may hereafter become due under or by virtue of any lease, whether written or verbal, or any letting of, or of any agreement for the use or occupancy of the premises or any part thereof, which may have been heretofore or may be hereafter made or agreed to or which may be made or agreed to by the Mortgagee under the powers herein granted, it being the intention hereby to establish an absolute transfer and assignment of all of such leases and agreements, and all the avails thereunder, unto the Mortgagee, and Mortgagor does hereby appoint irrevocably the Mortgagee its true and lawful attorney in its name and stead (with or without taking possession of the premises as provided in paragraph 21 herein) to rent, lease or let all or any portion of said premises to any party or parties at such rental and upon such terms as said Mortgagee shall, in its discretion, determine, and to collect all of said avails, rents, issues and profits arising from or accruing at any time hereafter, and all now due or that may hereafter become due under each and every of the leases and agreements, written or verbal, or other tenancy existing, or which may hereafter exist on said premises, with the same rights and powers and subject to the same immunities, exoneration of liability and rights of recourse and indemnity as the Mortgagee would have upon taking possession pursuant to the provisions of paragraph 22 hereof.

3730323

The Mortgagor represents and agrees that no rent has been or will be paid by any person in possession of any portion of the above described premises for more than one installment in advance and that the payment of none of the rents to accrue for any portion of the said premises has been or will be waived, released, reduced, discounted or otherwise discharged or compromised by the Mortgagor. The Mortgagor waives any rights of set-off against any person in possession of any portion of the above described premises. If any lease provides for the abatement of rent during repair of the premises demised thereunder by reason of fire or other casualty, the Mortgagor shall furnish to the Mortgagee rents insurance, the policies to be in amount and form and written by such insurance companies as shall be satisfactory to the Mortgagee. Mortgagor agrees that it will not assign any of the rents or profits of said premises, except to a purchaser or grantee of the premises.

Nothing herein contained shall be construed as constituting the Mortgagee a mortgagee in possession in the absence of the taking of actual possession of the premises by the Mortgagee pursuant to paragraph 22 hereof. In the exercise of the power herein granted the Mortgagee, no liability shall be asserted or enforced against the Mortgagee, all such liability being expressly waived and released by Mortgagor.

The Mortgagor further agrees to assign and transfer to the Mortgagee all future leases upon all or any part of the premises hereinabove described and to execute and deliver, at the request of the Mortgagee, all such further assurances and assignments in the premises as the Mortgagee shall from time to time require.

Although it is the intention of the parties that the assignment contained in this paragraph 20 shall be a present assignment, it is expressly understood and agreed, anything herein contained to the contrary notwithstanding, that the Mortgagee shall not exercise any of the rights or powers conferred upon it by this paragraph until a default shall exist hereunder.

21. Observance of Lease Assignment. In the event the Mortgagor, as additional security for the payment of the indebtedness described in and secured hereby, has sold, transferred and assigned, or may hereafter sell, transfer and assign, to the Mortgagee, its successors and assigns, any interest of the Mortgagor as lessor in any lease or leases, the Mortgagor expressly covenants and agrees that if the lessee or any of the lessees under said lease or leases so assigned, or the Mortgagor, as lessor therein, shall fail to perform and fulfill any term, covenant, condition or provision in said lease or leases, or any of them, on its or their part to be performed or fulfilled, at the times and in the manner in said lease or leases provided, or if Mortgagor shall suffer or permit to occur any breach or default under the provisions of any assignment of any lease or leases of the premises given as additional security for the payment of the indebtedness secured hereby and such default shall continue for three (3) days, then and in any such event, such breach or default shall constitute a default hereunder and at the option of the Mortgagee, and without notice to the Mortgagor, all unpaid indebtedness secured by this Mortgage shall, notwithstanding anything in the Note or in this Mortgage to the contrary, become due and payable as in the case of other defaults.

22. Mortgagee's Right of Possession in Case of Default. In any case in which under the provisions of this Mortgage the Mortgagee has a right to institute foreclosure proceedings, whether before or after the whole principal sum secured hereby is declared to be immediately due as aforesaid, or whether before or after the institution of legal proceedings to foreclose the lien hereof or before or after sale thereunder, forthwith, upon demand of Mortgagee, Mortgagor shall surrender to Mortgagee and Mortgagee

shall be entitled to take actual possession of the premises or any part thereto personally, or by its agents or attorneys, as for condition broken, and Mortgagee in its discretion may, with or without force and with or without process of law, enter upon and take and maintain possession of all or any part of said premises, together with all documents, books, records, papers and accounts of the Mortgagor or then owner of the premises relating thereto, and may exclude the Mortgagor, its agents or servants, wholly therefrom and may as attorney in fact or agent of the Mortgagor, or in its own name as Mortgagee and under the powers herein granted, hold, operate, manage and control the premises and conduct the business, if any, thereof, either personally or by its agents, and with full power to use such measures, legal or equitable, as in its discretion or in the discretion of its successors or assigns may be deemed proper or necessary to enforce the payment or security of the avails, rents, issues, and profits of the premises, including actions for the recovery of rent, actions in forcible detainer and actions in distress for rent, hereby granting full power and authority to exercise each and every of the rights, privileges and powers herein granted at any and all times hereafter, without notice to the Mortgagor, and with full power to cancel or terminate any lease or sublease for any cause or on any ground which would entitle Mortgagor to cancel the same, to elect to disaffirm any lease or sublease made subsequent to this Mortgage or subordinated to the lien hereof, to make all necessary or proper repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements to the premises as to it may seem judicious, insure and reinsure the same and all risks incidental to Mortgagee's possession, operation and management thereof and to receive all of such avails, rents, issues and profits.

The Mortgagee shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any leases, and the Mortgagor shall and does hereby agree to indemnify and hold the Mortgagee harmless of and from any and all liability, loss or damage which it may or might incur under said leases or under or by reason of the assignment thereof and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in said leases. Should the Mortgagee incur any such liability, loss or damage, under said leases or under or by reason of the assignment thereof, or in the defense of any claims or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees, shall be secured hereby, and the Mortgagor shall reimburse the Mortgagee therefor immediately upon demand.

23. Application of Income Received by Mortgagee. The Mortgagee in the exercise of the rights and powers hereinabove conferred upon it by paragraph 20 and paragraph 22 hereof shall have full power to use and apply the avails, rents, issues and profits of the premises to the payment of or on account of the following, in such order as the Mortgagee may determine:

- (a) to the payment of the operating expenses of said property, including cost of management and leasing thereof (which shall include reasonable compensation to the Mortgagee and its agent or agents, if management be delegated to an agent or agents, and shall also include lease commissions and other compensation and expenses of seeking and procuring tenants and entering into leases), established claims for damages, if any, and premiums on insurance hereinabove authorized;
- (b) to the payment of taxes and special assessments now due or which may hereafter become due on said premises;

- (c) to the payment of all repairs, decorating, renewals, replacements, alterations, additions, betterments, and improvements of said promises, including the cost from time to time of installing or replacing refrigeration and gas or electric stoves therein, and of placing said property in such condition as will, in the judgment of the Mortgagee, make it readily rentable; and
- (d) to the payment of any indebtedness secured hereby or any deficiency which may result from any foreclosure sale.

24. Compliance with Illinois Mortgage Foreclosure Law.

(a) In the event that any provision in this Mortgage shall be inconsistent with any provision of the Illinois Mortgage Foreclosure Law (Chapter 110, Sections 5-1101 et seq., Illinois Revised Statutes), as such may be amended from time to time (herein called the "Act") the provisions of the Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Act.

(b) If any provision of this Mortgage shall grant to Mortgagee any rights or remedies upon default of the Mortgagor which are more limited than the rights that would otherwise be vested in Mortgagee under the Act in the absence of said provision, Mortgagee shall be vested with the rights granted in the Act to the fullest extent permitted by law.

(c) Without limiting the generality of the foregoing, all expenses incurred by Mortgagee to the extent reimbursable under Sections 15-1510 and 15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure shall be added to the indebtedness secured by this Mortgage or by the judgment of foreclosure.

(d) To the fullest extent permitted by law, including, without limitation, the Act, the Mortgagor hereby waives any and all rights to reinstate this Mortgage or to cure any defaults, except such rights of reinstatement and cure as may be expressly provided by the terms of the Note, this Mortgage, and the other security documents.

(e) Nothing contained herein is intended to be, or shall be construed to be, a waiver, relinquishment or impairment of the Mortgagee's rights to fully and completely enforce all rights of personal liability and personal recourse against any one or more of the obligors.

25. Environmental Matters. Mortgagor represents, warrants, covenants, and agrees unto Mortgagee and agrees as follows:

- (a) Mortgagor will not use, generate, manufacture, produce, store, release, discharge, or dispose of on, under or about the premises or transport to or from the premises any Hazardous Substance (as defined herein) or allow any other person or entity to do so;
- (b) Mortgagor shall keep and maintain the premises in compliance with, and shall not cause or permit the premises to be in violation of any Environmental Law (as defined herein) or allow any other person or entity to do so;
- (c) Mortgagor shall give prompt written notice to Mortgagee of:

UNOFFICIAL COPY

- (i) any proceeding or inquiry by any governmental authority whether Federal, state, or local, with respect to the presence of any Hazardous Substance (as defined herein) on the premises or the migration thereof from or to other property;
- (ii) all claims made or threatened by any third party against Mortgagor or the premises relating to any loss or injury resulting from any Hazardous Substance; and
- (iii) Mortgagor's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the premises that could cause the premises or any part thereof to be subject to any restrictions on the ownership, occupancy, transferability or use of the premises under any Environmental Law;
- (d) Mortgagee shall have the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Environmental Law and Mortgagor hereby agrees to pay any attorneys' fees thereby incurred by Mortgagee in connection therewith;
- (e) Mortgagor shall protect, indemnify and hold harmless Mortgagee, its directors, officers, administrators, employees, agents, contractors, attorneys, successors, and assigns from and against any and all loss, damage, cost, expense or liability (including reasonable attorneys' fees and costs) directly or indirectly arising out of or attributable to the use, generation, manufacture, production, storage, release, threatened release, discharge, disposal, or presence of a Hazardous Substance on, under or about the premises, including, without limitation, (i) all foreseeable consequential damages and (ii) the costs of any required or necessary repair, cleanup, or detoxification of the premises and the preparation and implementation of any closure, remedial or other required plans. This indemnity and covenant shall survive the reconveyance of the lien of this Mortgage, or the extinguishment of such lien by foreclosure or action in lieu thereof;
- (f) in the event that any investigation, site monitoring, containment, cleanup, removal, restoration, or other remedial work of any kind or nature (the "Remedial Work") is reasonably necessary or desirable under any applicable local, state or Federal law or regulation, any judicial order, or by any governmental or nongovernmental entity or person because of, or in connection with, the current or future presence, suspected presence, release or suspected release of a Hazardous Substance in or into the air, soil, ground water, surface water or soil vapor at, on, about, under or within the premises, or any portion thereof, Mortgagor shall within thirty (30) days after written demand for performance thereof by Mortgagee or other party or governmental entity or agency (or such shorter period of time as may be required under any applicable law, regulation, order, or agreement), commence to perform, or cause to be commenced, and thereafter diligently prosecuted to completion, all such Remedial Work. All Remedial Work shall be performed by one or more contractors, approved in advance in writing by Mortgagee, and under the supervision of a consulting engineer approved in

3730323

advance in writing by Mortgagee. All costs and expenses of such Remedial Work shall be paid by Mortgagor, including, without limitation, the charges of such contractor and the consulting engineer, and Mortgagee's reasonable attorneys' fees and costs incurred in connection with the monitoring or review of such Remedial Work. In the event Mortgagor shall fail to timely commence, or cause to be commenced, or fail to diligently prosecute to completion, such Remedial Work, Mortgagee may, but shall not be required to, cause such Remedial Work to be performed and all costs and expenses thereof incurred in connection therewith shall become part of the indebtedness secured hereby;

- (g) without Mortgagee's prior written consent, which shall not be unreasonably withheld, Mortgagor shall not take any remedial action in response to the presence of any Hazardous Substance on, under, or about the premises, nor enter into any settlement agreement, consent decree, or other compromise in respect to any Hazardous Substance claims. Said consent may be withheld, without limitation, if Mortgagee, in its reasonable judgment, determines that said remedial action, settlement, consent, or compromise might, impair the value of Mortgagee's security hereunder; provided, however, that Mortgagee's prior consent shall not be necessary in the event that the presence of Hazardous Substances in, on, under, or about the premises either poses an immediate threat to the health, safety, or welfare of any individual or is of such a nature that an immediate remedial response is necessary, and it is not possible to obtain Mortgagee's consent before taking such action, provided that in such event Mortgagor shall notify Mortgagee as soon as practicable of any action so taken. Mortgagee agrees not to withhold its consent, when such consent is required hereunder, if either (i) a particular remedial action is ordered by a court of competent jurisdiction, or (ii) Mortgagor establishes to the reasonable satisfaction of Mortgagee that there is no reasonable alternative to such remedial action that would result in materially less impairment of Mortgagee's security hereunder.

For purposes of this paragraph 25, the following terms shall have the meanings as set forth below:

- (A) "Environmental Laws" shall mean any Federal, state or local law, statute, ordinance, or regulation pertaining to health, industrial hygiene, or the environmental conditions on, under or about the premises, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA") as amended, 42 U.S.C. Sections 9601 et seq., and the Resource Conservation and Recovery Act of 1976 ("RCRA") as amended, 42 U.S.C. Sections 6901 et seq.
- (B) The term "Hazardous Substance" shall include without limitation:
- (i) Those substances included within the definitions of any or more of the terms "hazardous substances," "hazardous materials," "toxic substances," and "solid waste" in CERCLA, RCRA, and the Hazardous Materials Transportation Act as amended, 49 U.S.C. Sections 1801 et seq., and in the regulations promulgated pursuant to said laws or under applicable Illinois law;

3730323

- (ii) Those substances listed in the United States Department of Transportation Table (49 CFR 172.101 and amendments thereto) or by the Environmental Protection Agency (or any successor agency) as hazardous substances (40 CFR Part 302 and amendments thereto);
- (iii) Such other substances, materials and wastes which are or become regulated under applicable local, state or Federal Laws, or which are classified as hazardous or toxic under Federal, state, or local laws or regulations; and
- (iv) Any material, waste or substance which is (A) petroleum, (B) asbestos, (C) polychlorinated biphenyls, (D) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act, 33 U.S.C. §§1251 et seq. (33 U.S.C. §1321), or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. §1317); (E) flammable explosives; or (F) radioactive materials.

26. Mortgagee's Right of Inspection. Mortgagee shall have the right to inspect the premises at all reasonable times and access thereto shall be permitted for that purpose.

27. Late Charge. In the event the Mortgagor shall, from time to time, accept payment of any installment required on the Note and under this Mortgage which is in arrears, Mortgagee may collect a "late charge" as provided for in the Note to cover the extra expense involved in handling delinquent payments; provided, however, that nothing in this paragraph contained shall authorize the Mortgagee to collect or demand any payment which would result in the imposition of interest in excess of the maximum amount allowed by law.

28. Condemnation. Mortgagor hereby assigns, transfers and sets over unto Mortgagee the entire proceeds of any award or any claim for damages for any of the mortgaged property taken or damaged under the power of eminent domain or by condemnation. Mortgagee may elect to apply the proceeds of the award upon or in reduction of the indebtedness secured hereby, whether due or not, or to require Mortgagor to restore or rebuild, in which event the proceeds shall be held by Mortgagee and used to reimburse Mortgagor for the cost of the rebuilding or restoring of buildings or improvements on said premises, in accordance with plans and specifications to be submitted to and approved by Mortgagee. If the Mortgagor is obligated to restore or replace the damaged or destroyed buildings or improvements under the terms of any lease or leases which are or may be prior to the lien of this Mortgage and if such taking does not result in cancellation or termination of such lease, the award shall be used to reimburse Mortgagor for the cost of the rebuilding or restoring of buildings or improvements on said premises, provided Mortgagor is not then in default under this Mortgage. In the event Mortgagor is required or authorized, either by Mortgagee's election as aforesaid, or by virtue of any such lease, to rebuild or restore, the proceeds of the award shall be paid out in the same manner as is provided in paragraph 8 hereof for the payment of insurance proceeds toward the cost of rebuilding or restoration. If the amount of such award is insufficient to cover the cost of rebuilding or restoration, Mortgagor shall pay such cost in excess of the award, before being entitled to reimbursement out of the award. Any surplus which may remain out of said award after payment of such cost of rebuilding or restoration shall, at the option of Mortgagee, be applied on account of the indebtedness secured hereby or be paid to any other party entitled thereto. In applying the proceeds of any award on account of the indebtedness secured hereby, Mortgagee shall be entitled to collect, out of the

3730323

proceeds of the award, a premium on the amount prepaid, at the same rate as though Mortgagor had elected at the time of such application of proceeds (or if Mortgagor then has no such election, at the first succeeding date on which Mortgagor could so elect) to prepay the indebtedness in accordance with the terms of the Note secured hereby.

29. Release upon Payment and Discharge of Mortgagor's Obligations. Mortgagee shall release this Mortgage and the lien thereof by proper instrument upon payment and discharge of all indebtedness secured hereby and payment of a reasonable fee to Mortgagee for the preparation and execution of such release.

30. Giving of Notice. Any notice which either party hereto may desire or be required to give to the other party shall be in writing and the mailing thereof by certified mail addressed to the Mortgagor at its principal office (designated by street address) or to the Mortgagee, at its principal office in Chicago, Illinois to the attention of the office of the manager in charge of commercial rehabilitation loans and specifying the loan number, or at such other place within the United States as any party hereto may by notice in writing designate as a place for service of notice, shall constitute service of notice hereunder. Any notice given by the Mortgagee shall be deemed given on the date the same is deposited in the United States mail.

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

32. Waiver of Statutory Rights. Mortgagor shall not and will not apply for or avail itself of, and hereby knowingly waives, to the fullest extent permitted by law, any and all present and future appraisal, valuation, stay, homestead, extension or exemption laws, or any redemption and moratorium laws, under any state or federal law, now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, and hereby waives the benefit of such laws. Mortgagor, for itself and all who may claim through or under it, waives any and all right to have the premises and estates comprising the premises marshalled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the mortgaged property sold as an entirety, or separately in such order and to satisfy such portions of the indebtedness as the Mortgagee, at its sole and unfettered discretion, may determine. THE MORTGAGOR HEREBY VOLUNTARILY AND KNOWINGLY WAIVES TO THE FULLEST EXTENT PERMITTED BY LAW, REINSTATEMENT AND REDEMPTION AS ALLOWED UNDER SECTION 15-1601(b) OF THE ACT, ON BEHALF OF THE MORTGAGOR, THE TRUST ESTATE AND ALL PERSONS BENEFICIALLY INTERESTED THEREIN, AND EACH AND EVERY PERSON ACQUIRING ANY INTEREST IN, OR TITLE TO, THE PREMISES DESCRIBED HEREIN SUBSEQUENT TO THE DATE OF THIS MORTGAGE, AND ON BEHALF OF ALL OTHER PERSONS TO THE FULLEST EXTENT PERMITTED BY THE PROVISIONS OF THE ILLINOIS STATUTES.

33. Forbearance Not Waiver. Any forbearance by Mortgagee in exercising any right or remedy hereunder, or otherwise afforded to Mortgagee by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy by Mortgagee. The acceptance by Mortgagee of payment of any sum secured by this Mortgage after the due date of such payment shall not be a waiver of Mortgagee's right to either require prompt payment when due of all other sums so secured or to declare a default for the failure to make prompt payment.

34. Mortgagee's Lien for Service Charges and Expense. At all times, regardless of whether any loan proceeds have been disbursed, this Mortgage secures (in addition to any loan proceeds

3730323

disbursed from time to time) the payment of any and all loan commissions, service charges, liquidated damages, expenses and advances due to or incurred by the Mortgagee in connection with the loan to be secured hereby, all in accordance with the application and loan commitment issued in connection with this transaction.

35. Furnishing of Financial Statements to Mortgagee. Upon request, Mortgagor shall furnish to Mortgagee, a semi-annual operating statement of income and expense of the mortgaged premises signed and certified by the Mortgagor's beneficiary or beneficiaries.

36. Cumulative Rights. Each right, power and remedy herein conferred upon the Mortgagee is cumulative of every other right or remedy of the Mortgagee, whether herein or by law conferred, and may be enforced concurrently therewith.

37. Business Loan. Mortgagor has been advised by its beneficiaries that the proceeds of the loan secured by this Mortgage will be used for the purposes specified in Section 4(c) of Chapter 74 of the Illinois Revised Statutes (1975), that the loan secured hereby constitutes a business loan within the meaning of said section and that, accordingly, the loan secured hereby is exempt from the Illinois Usury requirements.

38. Binding on Successors and Assigns. The lien of this Mortgage and all of the provisions and conditions contained herein shall extend to and be binding upon all successors and assigns of the Mortgagor. The word "Mortgagee" when used herein shall include the successors and assigns of the Mortgagee named herein, and the holder or holders, from time to time, of the Note secured hereby.

39. Captions. The captions and headings of various paragraphs of this Mortgage are for convenience only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

40. Conflicts. In the event of any conflict between the terms hereof and the terms of the Note or any of the other related loan documents, the terms and provisions of this Mortgage shall control, including without limitation, any provisions in this Mortgage specifying "cure periods" for any event of Default.

41. Governing Law. This Mortgage is made pursuant to, and shall be construed according to, and governed by, the laws of the United States of America and the rules and regulations promulgated thereunder, including the laws, rules and regulations for federally chartered savings and loan associations to the maximum legal extent. If any provision of the Note or this Mortgage is construed or interpreted by a court of competent jurisdiction to be void, invalid or unenforceable, such decision shall not affect the remaining provisions of the Note or this Mortgage.

42. Business Day. When used herein, the term "business day" shall mean any day other than a Saturday, Sunday or official national or State of Illinois holiday. If any payment to be made or obligation to be performed hereunder is to be made or performed on a day other than a business day, it shall be deemed to be made or performed in a timely manner if done on the next succeeding business day.

43. Maximum Amount of Indebtedness Secured. Notwithstanding any provisions of this Mortgage permitting any additional sums to be advanced on or after the date hereof, whether as additional loans or for any payments authorized hereby, the total amount of indebtedness secured by this Mortgage shall not at any time exceed Ten Million Dollars (\$10,000,000).

UNOFFICIAL COPY

THIS MORTGAGE is executed by the undersigned, not personally but as Trustee as aforesaid in the exercise of the power and authority conferred upon and vested in it as such Trustee (and said Association) hereby warrants that it possesses full power and authority to execute this instrument), and it is expressly understood and agreed that nothing herein or in the Note contained shall be construed as creating any liability on the said Mortgagor or on said Association personally to pay the Note or any interest that may accrue thereon, or any indebtedness accruing hereunder, or to perform any covenant either express or implied herein contained (it being understood and agreed that each of the provisions hereof, except the warranty hereinabove contained in this execution clause, shall constitute a condition and not a covenant or agreement, regardless of whether the same may be couched in language of a promise or covenant or agreement), all such liability, if any, being expressly waived by Mortgagee and by every person now or hereafter claiming any right or security hereunder, and that so far as the Mortgagor and its successors and said Association personally are concerned, the legal holder or holders of the Note and the owner or owners of any indebtedness accruing hereunder shall look solely to any one or more of: (1) the premises hereby conveyed and the rents, issues and profits thereof, for the payment thereof, by the enforcement of the lien hereby created, in the manner herein and in the Note provided; (2) any other security given to secure said indebtedness; or (3) the personal liability of the guarantor, co-signor, surety or endorser, if any.

IN WITNESS WHEREOF, HARRIS TRUST AND SAVINGS BANK, not personally but as Trustee as aforesaid, has caused these presents to be signed by its Vice President, and its corporate seal to be hereunto affixed and attested by its Assistant Secretary, the day and year first above written.

HARRIS TRUST AND SAVINGS BANK
not personally, but as Trustee
as aforesaid

ATTEST:

Assistant Secretary

By:

Its: Vice President

3730323

UNOFFICIAL COPY

01730323

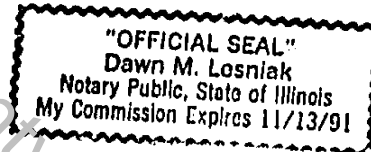
STATE OF ILLINOIS)
) SS:
COUNTY OF C O O K)

I, DAWN M. LESNIAK, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that JAMES J. PERNER ^{Vice President} of Harris Trust and Savings Bank, and KENNETH E. PIEKUT ^{ASSISTANT SECRETARY} of said Association who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Vice President and ASSISTANT SECRETARY, respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said Association, as Trustee as aforesaid, for the uses and purposes therein set forth; and the said ASSISTANT SECRETARY then and there acknowledged that (he) (she), as custodian of the corporate seal of said Association, did affix the corporate seal of said Association to said instrument as (his) (her) own free and voluntary act and as the free and voluntary act of said Association, as Trustee as aforesaid, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 5th day of August, 1988.

Dawn M. Lesniak
Notary Public

My Commission Expires:



Mail to:
PORTES, SHARP, HERBST & KRAVETS, LTD.
333 West Wacker Drive, Suite 500
Chicago, Illinois 60606
Attn: Jonathan A. Hattenbach
(312) 372-1555

COOK COUNTY Clerk's Office

3730323

178373
AN

3730323

Submitted by _____
Address _____
Profession _____
Deliver duplicate Trust _____
Address _____
Notified _____
CTI

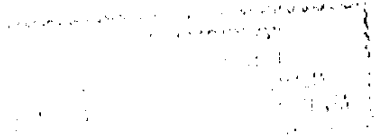
CHICAGO TITLE INS
7/16/88

UNOFFICIAL COPY

PROPERTY OF COOK COUNTY CLERK'S OFFICE

PROPERTY OF COOK COUNTY CLERK'S OFFICE

Property of Cook County Clerk's Office



10/10/00