

UNOFFICIAL COPY

Property of Cook County Clerk's Office

10750143

3780143

3619576

0000-510-108-41-804

IN COOK COUNTY, ILLINOIS,
 TITLE OF COOK COUNTY AN DOCUMENT 182200 AND 182201,
 OF COOK REGISTERED IN THE OFFICE OF THE REGISTER OF
 COOK COUNTY DESCRIBED IN DEED TO THE COUNTY
 THROUGH SAID REGISTER DESCRIBED IN DEED TO THE COUNTY
 SECTION 14, AND EXCEPTING FROM SAID TRACT OF LAND
 OF SAID SOUTH WEST 1/4 OF THE SOUTH EAST 1/4 OF
 INTERSECTION OF SAID PARALLEL LINE WITH THE SOUTH LINE
 PARALLEL LINE A DISTANCE OF 24.27 FEET TO THE
 SAID RAILROAD; THENCE SOUTHWEST ALONG SAID
 TO AND PARALLEL WITH THE WESTERN RIGHT OF WAY LINE OF
 IS 140 FEET SOUTHWEST ALONG AS MEASURED AT RIGHT ANGLES
 TIME A DISTANCE OF 100 FEET TO A POINT IN A LINE WHICH
 685.88 FEET; THENCE SOUTHWEST ALONG A DIAGONAL
 SOUTH EAST 1/4 OF THE SOUTH WEST 1/4 A DISTANCE OF
 PARALLEL WITH SAID NORTH LINE OF THE EAST 1/4 OF THE
 200 FEET SOUTH OF MEASURED AT RIGHT ANGLES TO AND
 WEST 1/4 OF SAID SECTION 14; THENCE EAST ALONG A LINE
 OF SAID EAST 3/4 OF THE SOUTH EAST 1/4 OF THE SOUTH
 14 ACRES SAID, 200 FEET SOUTH OF THE NORTH WEST CORNER
 OF THE SOUTH EAST 1/4 OF THE SOUTH WEST 1/4 OF SECTION
 BEGINNING AT A POINT ON THE WEST LINE OF THE EAST 3/4

THAT PART OF THE EAST 3/4 OF THE EAST 1/2 OF THE SOUTH
 WEST 1/4 AND OF THE WEST 1/2 OF THE SOUTH EAST 1/4 OF
 SECTION 14, TOWNSHIP 22 NORTH, RANGE 11 EAST OF THE
 THIRD PRINCIPAL MERIDIAN (TAKEN AS A TRACT) LIES
 WESTERNLY OF THE WESTERN LINE OF RAILROAD RIGHT OF WAY
 LINE OF THE CHICAGO AND MILWAUKEE RAILROAD, EXCEPTING
 FROM SAID TRACT OF LAND THAT PART THEREOF LYING
 NORTHWEST AND EASTERNLY OF THE FOLLOWING DESCRIBED LINE:

THE SOUTH 228.66 FEET OF THE WEST 600 FEET OF THE
 FOLLOWING DESCRIBED PARCEL:

EXHIBIT A
 Legal Description

0 3 6 1 9 8 7 8

5220
 Description of property located by the
 register for city of Chicago

Office

UNOFFICIAL COPY

Property of Cook County Clerk's Office

0 3 6 1 9 8 7 0

WHEREAS, pursuant to the terms of the Loan Agreement (the "Account") under which, subject to the provisions of the Loan Agreement, the Company may borrow from Mortgagee up to SIX MILLION AND NO/100 (\$6,000,000) DOLLARS. The account is evidenced by three notes (which replace the second revolving credit note) of even date herewith made by Mortgagee and the Company payable to the order of First Chicago, Security Pacific and Pittsburgh National respectively (all as more specifically described in the Loan Agreement) ("Revolving Notes") through

WHEREAS, pursuant to the terms of the Loan Agreement, THIRTY-EIGHT MILLION AND NO/100 DOLLARS (\$38,000,000) of the Credit take the form of a term loan and is evidenced by three notes (which replace the second term note) of even date herewith (the "Term Notes") made by Mortgagee and the Company payable to the order of First Chicago, Security Pacific and Pittsburgh National respectively (all as more specifically described in the Loan Agreement), Mortgagee, in and by which Term Notes Mortgagee and the Company promise to pay the said aggregate principal sum or so much thereof as may have been advanced and is outstanding from time to time and interest at the rate and in the manner set forth in the Term Notes, with a final payment of the balance due on December 31, 1994. All of said principal and interest are payable at such place as Mortgagee may from time to time designate in writing to Mortgagee and in the absence of such designation at the office of Mortgagee in Chicago, Illinois;

WHEREAS, the Loan Agreement provides for a term loan and revolving credit totaling FORTY-FOUR MILLION AND NO/100 DOLLARS (\$44,000,000) (the "Credit");

WHEREAS, Mortgagee, Mortgagee and the Company are contingently herewith entering into a certain Amended and Restated Revolving Credit and Term Loan Agreement dated as of May 22, 1987 (the "Loan Agreement").

WHEREAS, each of Security Pacific and Pittsburgh National have purchased from First Chicago an interest in the second loan agreement as evidenced by that certain loan assignment and assumption agreement dated May 22, 1987;

WHEREAS, each of Security Pacific and Pittsburgh National have purchased from First Chicago an interest in the second loan agreement as evidenced by that certain loan assignment and assumption agreement dated May 22, 1987;

WHEREAS, each of Security Pacific and Pittsburgh National have purchased from First Chicago an interest in the second loan agreement as evidenced by that certain loan assignment and assumption agreement dated May 22, 1987;

3780143

826198

UNOFFICIAL COPY

Property of Cook County Clerk's Office

TOGETHER with all Mortgages, right, title and interest in all improvements, tenements, easements, fixtures, and appurtenances thereto pertaining or belonging whether now held or hereafter acquired, and all rents, issues and profits thereof for so long and during all such times as Mortgages may be entitled thereto (which are pledged primarily and on a

"Premises," hereinafter described, is hereinafter referred to as the Cook and the State of Illinois which, with the property interest therein, situate, lying and being in the County of and made a part hereof and all of its estate, right, title and assigns, the real estate described in Exhibit A attached hereto and RELEASE, ALIEN AND CONVEY unto Mortgages, its successors and Credit, Mortgages does by these presents GRANT, REMISE, document or instrument evidencing, securing or relating to the Loan Agreement, Term Notes, Revolving Notes or any other covenants, agreements and obligations under this Mortgage, the Loan Agreement, Term Notes and Revolving Notes, and also to Mortgages under the Original Loan Agreement and related other debt presently or in the future owed by Mortgages to hereof by this reference), and (y) to secure the Credit and all above (such recitals being incorporated herein and made a part which are hereby acknowledged, and (iii) the recitals set forth good and valuable consideration, the receipt and sufficiency of the making and extension of the Credit by Mortgages, (ii) other NOW, THEREFORE, (x) for and in consideration of: (i)

execution, delivery and recording of this Mortgage to secure the Term Notes, the Revolving Notes, and Mortgages' covenants, agreements and obligations under the Loan Agreement;

WHEREAS, the face amount of the Term Notes and Revolving Notes aggregate the total amount of the Credit described hereinafter; and

WHEREAS, the terms of the Loan Agreement require the execution, delivery and recording of this Mortgage to secure the Term Notes, the Revolving Notes, and Mortgages' covenants, agreements and obligations under the Loan Agreement; and in the absence of such designation at the office of Mortgages in Chicago, Illinois;

and by which Revolving Notes Mortgages and the Company promise to pay to Mortgages all sums drawn under the account at the interest rate and in the manner set forth in the Loan Agreement, with the availability of the account to terminate on termination of the Loan Agreement, and with all sums borrowed under the account and all interest and all other sums payable under the Revolving Notes to be paid in full on December 31, 1994. All of said principal and interest are payable at such place as Mortgages may from time to time designate in writing to Mortgages and in the absence of such designation at the

3780143

3619878

UNOFFICIAL COPY

Property of Cook County Clerk's Office

All of the land, estate and property hereinafore described, real, personal and mixed, whether annexed or annexed, or not (except where otherwise hereinabove specified) and all rights hereby conveyed and mortgaged are intended so to be as a unit and are hereby understood, agreed and declared to form a part and parcel of the real estate and to be appropiated to the use of the real estate, and shall for the purposes of this mortgage be deemed to be real estate and conveyed and mortgaged hereby as to any of the property aforesaid which (hereinafter) does not so form a part and parcel of the real estate, this mortgage is hereby deemed to be, or will, a Security Agreement under the Uniform Commercial Code in effect in the jurisdiction in which the premises are located (UCC) for the purpose of creating hereby a security interest in such property, which mortgage or hereby grants to mortgagee as secured party (as said term is defined in the UCC), securing said indebtedness and obligations and mortgages shall have in addition to its rights and remedies

TOGETHER with all estates, interests, rights, titles, claims or demands, including claims or demands with respect to the proceeds of insurance in effect with respect thereto, which mortgagee now has or may hereinafter acquire in the premises, as more specifically set forth in this mortgage, and any and all awards made for the taking of eminent domain, or by any proceedings or purchase in lieu thereof, as more specifically set forth in this mortgage.

party with said real estate and not secondarily), including but not limited to all fixtures, apparatus, equipment or articles now or hereafter therein or thereon used to supply heat, gas, air cooling, air conditioning, water, light, power, sanitation, sprinker protection, waste removal, refrigeration (whether single units or generally controlled), and ventilation, all other fixtures, apparatus, equipment, furniture, furnishings, and articles used or useful in connection with the operation of the premises and related facilities now or hereafter located upon said premises, all shades, awnings, venetian blinds, screens, screen doors, storm doors and windows, stoves and ranges, curtain fixtures, partitions, and attached floor coverings, now or hereafter therein or thereon whether now held or hereafter acquired -- including, however, (x) the company's inventory and farm products and (y) the company's equipment used in the manufacturing process at the premises, such inventory, farm products and equipment being covered separately by a Security Agreement from the company to mortgagee as secured party -- it being understood that the enumeration of any specific articles of property shall in no way result in or be held to exclude any items of property not specifically mentioned.

3750143

5486193

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

(d) the performance by Mortgagor of all other covenants, agreements and obligations on its part contained in

(c) all other sums advanced pursuant to the provisions of the Loan Agreement, this Mortgage, Term Notes, revolving notes, and any other documents evidencing and securing the credit (collectively, the "Loan Documents");

(b) any and all indebtedness evidenced by the revolving notes the aggregate principal amount of which shall not exceed at any given time SIX MILLION AND NO/100 DOLLARS (\$6,000,000), plus all interest accruing thereon, and all fees due and payable in connection therewith, and all other amounts due hereunder and otherwise secured hereby under law;

(a) all indebtedness evidenced by the Term Notes, including any future advances, the aggregate principal amount of which shall not exceed THIRTY-EIGHT MILLION AND NO/100 DOLLARS (\$38,000,000), plus all interest accruing thereon, and all other amounts due hereunder and otherwise secured hereby under law;

1. This Mortgage is to secure:

Obligations Secured

IT IS FURTHER UNDERSTOOD AND AGREED THAT:

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

Mortgagor covenants (i) that it is lawfully seized of the premises, (ii) that the same are unencumbered, except for the liens, encumbrances, conditions, restrictions, easements, leases, and other matters, rights or interests disclosed in Schedule B (or the equivalent section or portion) of the ALTA Loan Policy delivered to and accepted by Mortgagee contemporaneously with the execution and delivery of this Mortgage (herein called "permitted encumbrances") and (iii) that Mortgagor has good right, full power and lawful authority to convey and mortgage the same; and further, Mortgagor shall forever defend the premises and the quiet and peaceful possession of the same against the lawful claims of all persons whomsoever.

hereunder all rights and remedies of a secured party under the UCC. As to above personal property which the UCC classifies as fixtures, this instrument shall constitute a fixture filing and financing statement under the UCC.

3780113

0750190

UNOFFICIAL COPY

Property of Cook County Clerk's Office

3780143

3619878

2. (a) Except as otherwise provided or permitted in the Loan Agreement, Mortgages shall (i) promptly repair, restore or rebuild any buildings or improvements now or hereafter on the premises which may become damaged or be destroyed; (ii) keep the premises in good condition and repair, without waste, and free from mechanics' liens or other liens or claims for lien of any kind or nature whatsoever except permitted exceptions (collectively "liens"); (iii) pay when due any indebtedness which may be secured by a mortgage on the premises, whether senior or junior to this Mortgage and whether permitted by the terms hereof or otherwise, and comply with all requirements of all loan documents evidencing or securing such indebtedness, and upon request, exhibit satisfactory evidence of the discharge of any such lien to Mortgages; (iv) complete within a reasonable time any building or buildings or any improvements at any time in the process of erection upon the premises; (v) comply with all requirements of law, municipal ordinances, or restrictions of record with respect to the premises and the use thereof, the noncompliance with which would materially impair the use, occupancy or value of the premises; (vi) make no material alterations in the premises, except as required by law or municipal ordinance; (vii) suffer or permit no change in the general nature of the occupancy or use of the premises; (viii) institute or acquiesce in no zoning variation or rezoning without Mortgages' prior written consent; and (ix) pay each item of indebtedness secured by this Mortgage when due according to the terms hereof, and pay, perform, satisfy and discharge each of the obligations when required to do so under the terms of this Mortgage, the Loan Agreement, Term Notes, revolving notes and other loan documents.

Maintenance, Repair and Restoration of Improvements, Payment of Liens, Etc.

The foregoing items set forth in subsections (a) through (e) of Section 1 of this Mortgage are hereinafter collectively referred to as the "Obligations."

(e) Any renewals, extensions, amendments or modifications hereto of the Term Notes, Revolving Notes, Loan Agreement and other loan documents, including but not limited to any increase in the amount of the credit and the principal amount of the indebtedness secured hereby to a maximum of Seventy-Five Million Dollars (\$75,000,000) in the aggregate, which may hereafter be agreed to by the Company and Mortgages.

The Loan Agreement, this Mortgage, the Term Notes, the revolving notes and other loan documents; and

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

0 3 0 1 4 3

(b) Anything in Section 2(a)(ii) and 2(a)(iii) of this Mortgage to the contrary notwithstanding, Mortgagee may, in good faith and with reasonable diligence, contest the validity or amount of any Lien, and defer payment and discharge thereof during the pendency of such contest, provided: (1) that such contest shall have the effect of preventing the sale or forfeiture of the premises or any part thereof, or any interest therein, to satisfy such Lien; (ii) that, within ten (10) days after Mortgagee has first learned of the assertion of such Lien, Mortgagee shall have notified Mortgagee in writing of Mortgagee's intention to contest such Lien; (iii) that such contest shall not have a materially adverse consequence on Mortgagee's financial condition, in Mortgagee's sole opinion; and (iv) that Mortgagee shall have deposited with Mortgagee at such place as Mortgagee may from time to time in writing report, a sum of money which shall be sufficient in the judgment of Mortgagee to pay in full such Lien and all interest which might become due thereon, and shall keep on deposit an amount so sufficient at all times, increasing such amount to cover additional interest whenever, in the judgment of Mortgagee, such increase is advisable. If Mortgagee shall fail to prosecute such contest with reasonable diligence, or finally determined to be due upon the conclusion of such contest, over and above any amount which Mortgagee is to pay as provided below, or (2) fail to maintain sufficient funds on deposit as hereinafore provided, then Mortgagee may, at its option, apply the money so deposited in payment of or on account of such Lien, or that part thereof then unpaid, together with all interest thereon. If the amount of money so deposited shall be insufficient for the payment in full of such Lien, together with all interest thereon, Mortgagee shall, upon the final disposition of such contest, apply the money so deposited in full payment of such Lien or that part thereof then unpaid, together with all interest thereon (provided Mortgagee is not then in default hereunder) when so requested in writing by Mortgagee and then furnished by Mortgagee with sufficient funds to make such payment in full and with evidence satisfactory to Mortgagee of the amount of payment to be made. Notwithstanding the foregoing, if in connection with a contest of a Lien on the record with the terms of the "First Mortgage" (as such term is defined in Section 4 below), Mortgagee shall not be required to deposit money with Mortgagee under this Section (2) so long as Mortgagee maintains such cash deposit with the First Mortgagee and otherwise complies with the requirements of the First Mortgage. In lieu of the cash deposit described

CP10843

8256193

0 3 0 1 9 3 7 8

UNOFFICIAL COPY

Property of Cook County Clerk's Office

above, Mortgagor may deliver to Mortgagee either an amendment to or endorsement of the ALTA Loan Policy provided to Mortgagee at the time this Mortgage is executed or a payment bond from a bonding company satisfactory to Mortgagee; provided that such amendment, endorsement or bond shall insure over, or indemnify Mortgagee against, the lien which Mortgagee is conveying as aforesaid, and shall otherwise be in form and substance satisfactory to Mortgagee.

Payment of Taxes

3. (a) Mortgagor shall pay, before the due date thereof, all general real estate taxes, special taxes, special assessments, water charges, sewer service charges, and other charges against the premises, and shall, upon written request, promptly furnish to Mortgagee duplicate receipts evidencing such payment.

(b) Mortgagor may, in good faith and with reasonable diligence, contest the validity or amount of any such taxes or assessments provided: (1) that such contest shall have the effect of preventing the collection of the tax or assessment so contested and the sale or forfeiture of the premises or any part thereof, or any interest therein, to satisfy the same; (2) that such contest shall not have a materially adverse effect on Mortgagee's financial condition, in Mortgagee's sole opinion; and (3) that Mortgagee shall deposit with Mortgagee a sum of money deemed adequate by Mortgagee to pay such taxes and any penalty and interest thereon, increasing such deposit, as Mortgagee may from time to time require in its sole judgment. Mortgagee shall, upon the final disposition of such contest, apply the money so deposited in full payment of such taxes or that part thereof then unpaid together with all interest thereon (provided Mortgagee is not then in default hereunder) when so requested in writing by Mortgagee and when furnished by Mortgagee with sufficient funds to make such payment in full and with evidence satisfactory to Mortgagee of the amount of payment to be made. Notwithstanding the foregoing, if in connection with a contest of taxes on the premises Mortgagee deposits cash with the "First Mortgagee" in accordance with the terms of the "First Mortgage" (as such terms are defined in Section 6.01), Mortgagee shall not be required to deposit money with Mortgagee under this Section 3(b), so long as Mortgagee maintains such cash deposit with First Mortgagee and otherwise complies with the requirements of the First Mortgage. In lieu of the cash deposit described above, Mortgagee may deliver to Mortgagee either an amendment to or endorsement of the ALTA Loan Policy provided to Mortgagee at the time this Mortgage is executed or a payment bond from a bonding company satisfactory to Mortgagee; provided that such

3619578

3619578

UNOFFICIAL COPY

Property of Cook County Clerk's Office

0 3 8 1 9 0 7 8

071084C

84B619C

4. Mortgagor shall keep all buildings and improvements now or hereafter situated on the premises insured for a minimum of ninety percent (90%) of their replacement cost against loss or damage by fire, tornado, windstorm and extended coverage policy and such other hazards as may be reasonably required by mortgagee, including, without limitation, rent loss insurance. However in the reasonable opinion of mortgagee such protection is necessary, was damage insurance whenever in the reasonable opinion of mortgagee such protection is necessary and amount satisfactory to mortgagee, with mortgagee companies and amount satisfactory to mortgagee, with mortgagee claims attached to all casualty policies in favor of and in form satisfactory to mortgagee naming mortgagee as loss payee, and all policies shall include a provision requiring that the coverage evidenced thereby shall not be terminated or modified without thirty (30) days prior written notice to mortgagee. Mortgagor shall deliver copies of all policies and duplicates original certificates evidencing such insurances, including copies of additional and renewal policies and duplicate original certificates, together with evidence of payment of premiums thereon, to mortgagee, and, in the case of insurance policies to expire, shall deliver duplicate original certificates and copies of each renewal policy not less than thirty (30) days prior to their respective dates of expiration. Mortgagor will not permit any condition to exist which would nullify or partially invalidate any insurance thereon. Mortgagor shall not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained hereunder unless mortgagee is included thereon under a standard mortgage clause acceptable to mortgagee. Mortgagor shall immediately notify mortgagee whenever any such separate insurance is taken out and shall promptly deliver to mortgagee the policy or policies of such insurance.

Insurance

Mortgagee shall insure over, or indemnify mortgagee against, the taxes which mortgagor is consenting as stated, and shall otherwise be in form and substance satisfactory to mortgagee.

0 3 8 1 9 0 7 8

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Property of Cook County Clerk's Office

3780143

6. If the payment of the indebtedness evidenced by the obligations or any part thereof be extended or varied or if any part of the security be released, all persons or parties now or at any time hereafter liable therefor, or interested in the same, shall be held to consent to such extension, variation

Waiver of Extension of Time

7. Mortgages shall have the privilege of making payments on the principal of the obligations (in addition to the required payments) in accordance with the terms and conditions set forth in the Loan Agreement, Term Notes or revolving notes applicable to the respective obligations.

Payment Privilege

8. By the laws of the United States of America, or of any state having jurisdiction over mortgages, any stamp tax or similar tax is due or becomes due in respect of any of the obligations or the recording of this mortgage, Mortgagor covenants and agrees to pay such tax in the manner required by any such law. Mortgagor further covenants to hold harmless and agrees to indemnify Mortgagor, its successors or assigns, against any liability incurred by reason of the imposition of any stamp tax or similar tax on the issuance of the obligations or the recording of this mortgage.

Stamp Tax

9. In case of the foreclosure of this mortgage by judicial proceeding, the foreclosure sale shall be held in accordance with such judicial proceeding may cause a new loss clause to be attached to each of said policies making the loss thereunder payable to said purchaser; and any such foreclosure order may further provide that in case of one or more redemptions under said order, 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 cancelled and a new loss clause to be attached thereto, making the loss thereunder payable to such redeemer. In the event of foreclosure sale (with or without judicial proceedings), Mortgagor is hereby authorized, without the consent of purchaser at the sale, or to take such other steps as Mortgagor may deem advisable, to cause the interest of such purchaser to be protected by any of the said insurance policies.

361907R

UNOFFICIAL COPY

Property of Cook County Clerk's Office

10. In case of default on the part of Mortgagor under this mortgage and the failure of Mortgagor to cure such default within the applicable cure period, if any, Mortgagor may, but need not, make any payment or perform any act herein or in or with respect to any of the obligations required of Mortgagor, in any form and manner deemed expedient, 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 on title or claim thereof, or redem from any tax sale or foreclosure affecting the premises or contest any tax or assessment. Anything to the contrary notwithstanding, Mortgagor may immediately take action to cure any default in the payment of taxes or insurance premiums or any other default that creates an emergency regarding the priority or validity of the lien of this mortgage or the physical condition of the premises without regard to the Mortgagor's cure rights. All moneys paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including but not limited to attorneys' fees and expenses, and any other moneys advanced by Mortgagor

Mortgagor's Performance of Defaulted Act: Subrogation

9. 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 thereon, or imposing upon Mortgagor 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 the laws relating to the taxation of mortgages or debts secured by mortgages or the mortgagor's interest in the property, or the manner of collection of taxes so as to affect this mortgage or the indebtedness secured hereby, then, and in any such event, Mortgagor, upon demand by Mortgagor, shall pay such taxes or assessments, or reimburse Mortgagor therefor; provided, however, that if in the opinion of counsel for Mortgagor (a) it shall be unwise to require Mortgagor to make such payment, or (b) the making of such payment shall result in the imposition of interest beyond the maximum amount permitted by law, then, and in such event, Mortgagor may elect, by notice in writing given to Mortgagor, to declare all of the obligations to be and become due and payable sixty (60) days from the giving of such notice.

Effect of Changes in Laws Regarding Taxation

notwithstanding such extension, variation or release, hereof shall continue in full force, the right of recourse or release, and their liability and the lien and all provisions against all such persons being expressly reserved by Mortgagor,

0310143

0310143

UNOFFICIAL COPY

Property of Cook County Clerk's Office

375873

848619C

12. The following shall be a default ("Mortgage Default") hereunder: (a) any payment of principal or interest due under or with respect to any of the obligations or any other payment due in accordance with the terms of this Mortgage, is not paid when due and such default continues for five (5) days after the due date for such payment; or (b) any other of the covenants, agreements or conditions, hereinafter or hereinafter contained, required to be kept or performed or observed by Mortgagor in this Mortgage, are not observed or performed and such default is not remedied by Mortgagor within the lesser of ten (10) days after notice from Mortgagee to the Mortgagor or such shorter period of time for the curing of such default as may be allowed under the Loan Agreement, provided that all cure periods hereunder shall run concurrently with any cure period allowed with respect to any default under the Loan

Delays

11. Mortgagor in making any payment hereby authorized: (a) relating to taxes and assessments, may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof; or (b) for the purchase, discharge, compromise or settlement of any lien, may do so without inquiry as to the validity or amount of such lien or any claim for lien which may be asserted.

Mortgagor's Liability on Tax Bills, Etc.

to protect the 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 default rate as hereinafter defined in Section 26 below. 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 under this Mortgage. Should the proceeds of the obligations or any part thereof, or any amount paid out or advanced hereunder by Mortgagee, be used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any lien or encumbrance upon the premises or any part thereof on a party with or prior or superior to the lien hereof, then as additional security hereunder, the Mortgagee shall be subrogated to any and all rights, equal or superior to those of said outstanding liens, charges and indebtedness, however remote, regardless of whether said liens, charges and indebtedness are acquired by assignment or have been released or waived by the holder thereof upon payment.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

13. When either (1) the indebtedness secured hereby or any part thereof shall become due, whether by lapse of time or otherwise, or (ii) a Mortgage Default shall have occurred, Mortgages shall have the right to accelerate all the obligations and to foreclose the lien hereof by judicial action. In any suit to foreclose the lien hereof or in any other action to enforce any other remedy of mortgagee under this mortgage or with respect to any of the other obligations, there shall be allowed and included as additional indebtedness in the decree for sale or other judgment or decree 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

Foreclosure; Expenses of Litigation

major part thereof. Receiver or trustee or liquidator of all of its property or the they become due, or shall consent to the appointment of a admit in writing its inability to pay its debts generally as shall make an assignment for the benefit of creditors, or shall otherwise stayed within thirty (30) days; or (h) mortgagor jurisdiction relinquished or vacated or stayed on appeal or such trustee or receiver shall not be discharged or such dissolution, liquidation or winding up of the mortgagor, and thereof in any voluntary proceeding for the reorganization, jurisdiction of the property of the mortgagor or the major part involuntarily proceeding or any court shall have taken property of mortgagor or the major part thereof in any receiver shall be appointed for the mortgagor or for all of the mortgagor shall be adjudicated a bankrupt, or a trustee or a within thirty (30) days, as hereinafter provided; or (g) fact to obtain a vacation or stay of involuntary proceedings answer admitting insolvency or inability to pay its debts, or state or Federal, whether now or hereafter existing, or an provision of the Federal Bankruptcy Act or any similar law, partition in voluntary bankruptcy or insolvency or under any period provided therefor, if any; or (f) mortgagor shall file a default shall not have been cured within the applicable grace under or with respect to any of the obligations and such otherwise described in this section 12, shall have occurred agreement default; or (e) any default or event of default not applicable grace period provided therefor, if any; (Loan and such default shall not have been cured within the event of default shall have occurred under the loan agreement date when made in any material respect; or (d) any default or mortgagor contained in this mortgage shall be false as of the agreement; or (c) any representation or warranty made by

3720443

8486193C

UNOFFICIAL COPY

Property of Cook County Clerk's Office

14. The proceeds of any foreclosure sale of the Premises for the sale of property under the last paragraph (unnumbered) of Section 131 shall be distributed and applied in the following order of priority: first, on account of all costs and expenses incident to the foreclosure proceedings (or sale, as the case may be), including all such items as are mentioned in the preceding Section hereto; second, to the repayment of

Application of Proceeds of Foreclosure Sale

Mortgagee understands and agrees that in the event of a Mortgage Default, Mortgagee, to the extent this Mortgage constitutes a security agreement under the UCC, may take possession of any personal property covered by this Mortgage and dispose of the same by sale or otherwise; provided that at least ten (10) business days prior notice of such disposition must be given to the Mortgagee, all as provided for by the UCC, as hereafter amended, or by any similar or replacement statutes hereafter enacted, it being agreed that such ten (10) business days' notice shall constitute late and reasonable notice to Mortgagee of such disposition.

Upon any sale made under or by virtue of this Section or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, Mortgagee may bid for and acquire the premises or any part thereof and in lieu of paying cash therefor may make settlement for the purchase price by crediting upon the indebtedness of Mortgagee secured by this Mortgage the sale price, after deducting therefrom the expenses of the sale and the cost of the action and any other sums which Mortgagee is required to pay or that Mortgagee is authorized to deduct under this Mortgage.

Proceeding all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to title and value as Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale 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 Section mentioned and such expenses and fees as may be incurred in the protection of the premises and the maintenance of the lien of this Mortgage, including but not limited to the fees of any attorney employed by Mortgagee in any litigation or proceeding affecting this mortgage, the obligations or the premises, including bankruptcy proceedings, or in preparation for the commencement or defense of any proceeding or threatened suit or proceeding, shall be immediately due and payable by Mortgagee, with interest thereon at the default rate and shall be secured by this Mortgage.

3780143

03619378

UNOFFICIAL COPY

Property of Cook County Clerk's Office

3780143

6286196

15. Upon, or at any time after, the filing of a complaint to foreclose this mortgage, the court in which such complaint is filed may appoint a receiver of the premises. Such appointment may be made either before or after sale, without notice if permitted by law, 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, and mortgage hereunder may be appointed as such receiver. Such receiver shall have power: (a) to collect the rents, issues and profits of the premises during the pendency of such foreclosure suit and, in case of a sale and a deficiency, during the full statutory period of redemption, if any, whether there be redemption or not, as well as during any further time when mortgagor, except for the intervention of such receiver, would be entitled to collect such rents, issues and profits; (b) to extend or modify any then existing leases and to make new leases, which extensions, modifications and new leases may provide for terms to expire, or for options to leases to extend or renew, terms to expire, beyond the maturity date of the indebtedness hereunder and beyond the date of the issuance of a deed or deed to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon mortgagor and all persons whose interests in the premises are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the mortgage indebtedness, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any purchaser; and (c) 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 to: (x) the obligations of 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 any foreclosure sale; and (y) the deficiency in case of a sale and deficiency.

Appointment of Receiver

the obligations and all other items which under the terms hereof constitute secured indebtedness additional to that constituting the obligations with interest thereon as herein provided; and third, any overplus to mortgagor, its successors or assigns, as their rights may appear.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

Nothing herein contained shall be construed as constituting a mortgage in possession of the premises in the absence of the taking of actual control of the premises by mortgagee pursuant to Section 17 hereof. In the exercise of the powers herein granted mortgagee, no liability shall be asserted or enforced against mortgagee, all such liability being expressly waived and released by mortgagee.

Mortgagee agrees that no rent will hereafter be paid by any person in possession of any portion of the premises for more than one installment in advance, and Mortgagee further agrees that the payment of the rents to accrue for any portion of the premises will not be waived, reduced, retained, or otherwise discharged or compromised by Mortgagee for any period of time after the occurrence of a mortgage default. Mortgagee waives any right of set off against any person in possession of any portion of the premises. Mortgagee agrees that hereafter it will not assign any of the rents or profits of the premises, except to a purchaser or grantee of the premises.

16. To further secure the obligations, Mortgagee hereby assigns and transfers into Mortgagee all the rents, issues and profits now due and which may hereafter become due (whether before or after foreclosure or during the period of redemption) 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 Mortgagee under the powers herein granted, it being the intention hereby to establish an absolute transfer and assignment of all such leases and agreements and all the aforesaid rents, issues and profits to Mortgagee. Mortgagee hereby irrevocably appoints Mortgagee its true and lawful attorney in its name and stead (with or without taking possession of the premises as provided in Section 17 hereof) to rent, lease or let all or any portion of the premises to any party or parties at such rental and upon such terms as Mortgagee shall, in its discretion, determine, and to collect all of said aforesaid 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 the premises, with the same rights and powers and subject to the same immunities, exonerations of liability and rights of recourse and indemnity as Mortgagee would have upon taking possession pursuant to the provisions of Section 17 hereof.

Assignment of Rents and Leases

3780143

3619875

UNOFFICIAL COPY

Property of Cook County Clerk's Office

3710143

3610579

17. In any case in which under the provisions of this mortgage, mortgagee has a right to foreclose the lien hereof, notwithstanding, mortgagee shall be entitled to take actual possession of, the premises or any part thereof personally or by its agents or attorneys, subject to the rights of the first mortgagee. In such event, mortgagee in its discretion may, in accordance with law, enter upon and take and maintain possession of all or any part of the premises together with all documents, books, records, papers and accounts of mortgagee or

Mortgagee's Right of Possession in Case of Default

time, if any, as a mortgage default shall have occurred. Lease of the premises to pay rent thereunder prior to such time shall not apply as the obligation of the lessee under the existing mortgage shall terminate from the date of such default. The provisions of the lease paragraph of this section shall not apply as the obligation of the lessee under the existing mortgage shall terminate from the date of such default. Lease of premises, then, and in any such event, such material material breach or default under the provisions of any such lease, or if mortgagee shall suffer or permit to occur any as the time and in the event in such lease or lease premises is subject, in the part to be performed or fulfilled, entered into by mortgagee or the company or to which the lease, covenant, condition or provision in any lease or lease mortgage shall fail to perform and fulfill any material mortgage covenants and agrees that if mortgagee, as

required hereby exists after such foreclosure sale. Notwithstanding from the unpaid balance of the indebtedness of redemption from any such foreclosure sale, whether or the foreclosure of this mortgage, and until expiration of the this mortgage, after the foreclosure sale in connection with prior commencement of any action or proceeding to foreclose continue and remain in full force and effect both before and such time. The rights of mortgagee under this section shall occur and mortgagee shall retain such rights and powers until mortgagee shall not exercise any of the rights or powers herein contained to the contrary notwithstanding, that assignment, it is expressly understood and agreed, anything assignment contained in this section shall be a present assignment. Although it is the intention of the parties that the

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

UNOFFICIAL COPY

Property of Cook County Clerk's Office

0 3 6 1 9 3 7

the then owner of the premises selling thereof and may exclude
 mortgagee, in fact, as agent for mortgagee or in its own name as
 mortgagee, and under the power herein granted, hold, operate,
 manage and control the premises and conduct the business, it
 may, 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 direction of its successors or assigns
 may be deemed proper or necessary to enforce the payment or
 security of the said rents, issues, and profits of the
 premises, including actions for the recovery of rents, actions
 in forcible detainer and actions in distress for rent, and with
 full power: (a) to cancel or terminate any lease or sublease
 for any cause or on any ground which would entitle mortgagee to
 cancel the same; (b) to elect to discontinue any lease or
 sublease which is then subordinate to the lien hereof; (c) to
 extend or modify any then existing lease and to make new
 leases, which extensions, modifications and new leases may
 provide for terms to expire, or for options to leases to
 extend or renew terms to expire, beyond the maturity date of
 the indentures hereunder and beyond the date of the issuance
 of a deed or deeds to a purchaser or purchasers as a
 foreclosure sale, it being understood and agreed that any such
 leases, and the options or other such provisions to be
 contained therein, shall be binding upon mortgagee and all
 persons whose interests in the premises are subject to the lien
 hereof and upon the purchaser or purchasers at any foreclosure
 sale, notwithstanding any redemption from sale, discharge of
 the mortgage indebtedness, and extinction of any foreclosure
 decree, or renunciation of any debt or debt or deed to any
 purchaser; (d) to make all necessary alterations, additions,
 decorations, repairs, replacements, alterations, additions,
 betterments and improvements to the premises as to its main
 structure; (e) to insure and reinsure the same and all items
 incidental to mortgagee's possession, operation and management
 thereof; and (f) to receive all of such rents, issues, profits
 and profits; mortgagee 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 mortgagee.

0 3 6 1 9 3 7

Mortgagee shall be deemed to have constituted and
 appointed mortgagee its true and lawful attorney-in-fact with
 full power of substitution either in the name of mortgagee or
 in the name of mortgagee, to exercise any of the powers granted
 to mortgagee pursuant to this section 17. 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 lease, mortgage or deed hereof
 unless so indicated by the instrument which shall be recorded
 against the premises and hold mortgagee harmless of and from any
 action to indemnify and hold mortgagee harmless of and from any

UNOFFICIAL COPY

Property of Cook County Clerk's Office

20. Mortgagee hereby warrants, covenants and agrees that it will not mortgage the entire proceeds of any award or any claim for

Condition

19. Mortgagee shall have the right to inspect the premises at all reasonable times and access thereto shall be permitted for that purpose.

Mortgagee's Right of Inspection

(d) to the payment of any indebtedness secured hereby or any deficiency which may result from any foreclosure sale;

(c) to the payment of all repairs, decorating, renewals, replacements, alterations, additions, betterments, and improvements of the premises and of placing the premises in such condition as will, in the judgment of mortgagee, make it readily vendible;

(b) to the payment of taxes and special assessments now due or which may hereafter become due on the premises; and all payments of principal and interest due under the provisions of the first mortgage;

(a) to the payment of the operating expenses of the premises, including but not limited to the cost of the management and leasing thereof, established claims for damages, if any, and premium on insurance hereinafter authorized;

18. Mortgagee, in the exercise of the rights and powers hereinabove conferred upon it by section 16 and section 17 hereof, shall have full power to use and apply the walls, rents, issues and profits of the premises to the payment of or on account of the following, in such order as mortgagee may determine:

Application of Income Received by Mortgagee

and all liability, loss or damage (except for any such liability, loss or damage which may be caused by the willful misconduct or gross negligence of mortgagee) which mortgagee may or might incur by reason of its performance of any action authorized under this section it and of and from any and all claims and demands whatsoever which may be asserted against mortgagee by reason of any alleged obligation or undertaking on its part to perform or discharge any of the terms, covenants or agreements of mortgagee.

3619975

5/20/14

UNOFFICIAL COPY

Property of Cook County Clerk's Office

22. Any notice which either party hereto may desire or be required to give to the other party shall be in writing and shall be hand-delivered or delivered by messenger or air courier service (effective on delivery), or shall be sent by United States registered or certified mail, postage prepaid, return receipt requested effective two (2) business days after mailing, or shall be sent by telegraph or telex effective when delivered to the appropriate office for transmission, charges

Giving of Notice

21. If mortgagor shall fully pay all principal and interest on the indebtedness secured hereby and fully comply with, satisfy and discharge all of the other terms and provisions hereof and all other obligations to be paid, performed and complied with by mortgagor, then mortgagor shall execute and deliver to mortgagor a release of this mortgage in recordable form.

Release upon Payment and Discharge of Mortgagor's Obligations

damages for any of the premises (or any interest therein) taken or damaged by the power of eminent domain or by condemnation. Mortgagee shall be entitled (but shall not be obligated) to participate in the collection of such proceeds and any such proceeds shall be first applied to reimburse mortgagee for all costs and expenses, including but not limited to attorney's fees and expenses incurred in connection with the collection of such proceeds. Mortgages may (1) retain the remainder of such award in payment or reduction of the indebtedness secured hereby in such order as mortgagee shall determine, whether due or not, or (ii) hold the proceeds of such award and permit the same to be used to reimburse mortgagee for the cost of the rebuilding or restoration of buildings or improvements on the premises, in accordance with plans and specifications to be submitted to and approved by mortgagee. If the proceeds are to be used to reimburse mortgagee for rebuilding or restoration, the proceeds of the award shall be paid out in the same manner as is provided in section 5 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, mortgagee shall pay such cost in excess of the amount of the award before it receives any 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. The foregoing provisions shall in each case be subject to the rights of the first mortgagee.

3780143

3519878

UNOFFICIAL COPY

Property of Cook County Clerk's Office

3780143

3619878

23. No action for the enforcement of the lien hereof shall be subject to any defense which would not be good and available to the party imposing the same in an action at law upon the Obligations. Mortgages shall be entitled to enforce payment and performance of any indebtedness secured hereby and to exercise all rights and powers under this Mortgage or under or with respect to any other Obligations or any law now or hereafter in force, notwithstanding that some or all of the said indebtedness secured hereby may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment or otherwise. Neither the acceptance of this Mortgage nor its enforcement, whether by court action or other powers herein contained, shall prejudice or in any manner affect Mortgages or rights to realize upon or enforce any other security now or hereafter held by Mortgages, it being agreed that Mortgages shall be entitled to enforce this Mortgage and any other remedy herein or by law provided or permitted, but each shall be cumulative and all be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given hereby to Mortgages or to which it may be otherwise entitled, may be exercised, concurrently or independently, from time to time, and as often as it may be deemed expedient, by Mortgages and Mortgages may pursue inconsistent remedies, no waiver of any Mortgage default or Loan Agreement default of the Mortgages shall be implied from any omission by the Mortgages to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect any such default other than the default specified in the express waiver and that only for the time and to the extent therein stated. No acceptance of any payment of any one or more delinquent installments which does not include interest at the default rate from the date of delinquency, together with any required late charge, shall constitute a waiver of the right of Mortgagee at any time thereafter to demand and collect payment of interest at such default rate or of late charges, if any.

Waiver of Defense; Remedies Not Exclusive; Time is of the Essence.

prepaid, and in all cases addressed to Mortgagee at 111 West Washington Street, Chicago, Illinois 60602 Attn: Land Trust Department, with a copy to William O. Brown, Bell, Boyd & Lloyd, Three First National Plaza, Suite 3300, Chicago, Illinois 60602; or to Mortgagee at One First National Plaza Chicago, Illinois 60602 Attn: Robert R. Bourke, with a copy to Douglas M. McNaughton, Hopkins & Sutter, Three First National Plaza, Chicago, Illinois 60602, or at such other address and place as any party hereto may by notice in writing designate to the other as the address or place for service of notice.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

3780143

6486193

(b) that to the best of Mortgagor's knowledge, the existing use and condition of the Premises do not violate any building, health, fire, water, use, or similar statute, ordinance, law, regulation or code, nor has Mortgagor received notice of any such violation which has not been corrected, except for such violations as would not, in the aggregate, have a material adverse effect on Mortgagor's financial condition, results of operations or business; that the existing use and condition of the Premises do not violate any zoning statute, ordinance, law, regulation or code, nor has Mortgagor received notice of any such violation which has not been corrected; that the Premises are in conformance with all material respects with current zoning requirements, and including, without limitation, all parking requirements, and

(a) that as of the date hereof and thereafter, Mortgagor has good and marketable fee simple title to the Premises, subject only to the permitted exceptions;

25. To induce Mortgagor to execute the Loan Agreement, make the credit available to Mortgagor in accordance with the terms thereof and to discharge the proceeds of the indebtedness secured by this Mortgage, Mortgagor hereby represents to Mortgagor as follows:

Representations of Mortgagor

24. To the fullest extent permitted under applicable law, Mortgagor shall not and will not apply for or avail itself of any appraisal, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws," now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but 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 property 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 Premises sold at an entirety. Mortgagor hereby waives and any all rights of redemption from sale under any order or decree of foreclosure of this Mortgage on its behalf and on behalf of each and every person acquiring any interest in or title to the Premises subsequent to the date of this Mortgage. The foregoing waiver of the right of redemption is made pursuant to Ill. Rev. Stat. Ch. 110, § 12-135.

Waiver of Statutory Rights

Time is of the essence of this Mortgage and each of the covenants and provisions hereof.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

3780143

(g) that Mortgagee has not received any notice from any insurance company of any defects or inadequacies in the premises which would materially adversely affect the insurability of the premises or which would materially increase the cost of insuring the premises beyond that which is customarily charged for similar property in the vicinity of the premises;

3619878

(e) that Mortgagee has not entered into any leases or other arrangements for occupancy of space within the premises or that (i) no condemnation or relocation of any roadways or easements, (ii) no denial of access to the premises from any point of access to the premises, has commenced which could have a material adverse effect on the use, occupancy or enjoyment of the premises; and that to the best of Mortgagee's knowledge, none of the foregoing is contemplated by any governmental authority which could have a material adverse effect on the use, occupancy or enjoyment of the premises;

(d) that the execution, delivery and performance of this Mortgage, the Term Notes, the Revolving Notes, the Loan Agreement and the other loan documents and the payment, performance, satisfaction or discharge of the other obligations have not constituted (and will not, upon the giving of notice or lapse of time or both, constitute) a material breach or default under any other agreement to which Mortgagee is a party or may be bound or affected, or a violation of any law or court order which may affect the premises, any part thereof, any interest therein, or the use thereof;

(c) that no litigation or proceedings are pending, or to the best of Mortgagee's knowledge are threatened, against Mortgagee (i) which will or could affect the validity or priority of the lien of the mortgage, (ii) which has or will have a material adverse effect on the ability of Mortgagee to perform its obligations pursuant to and as contemplated by the terms and provisions of this mortgage or to pay, perform, satisfy or discharge the other obligations, or (iii) which has or will have a material adverse effect on the operation or condition of the premises or any part thereof;

that the premises are not a manufacturing or special use that would in any way prohibit continued use of the premises as currently operated; and the premises are mortgaged to Mortgagee shall include all rights to all off-site facilities, if any, necessary to ensure compliance with all laws and to afford adequate utility service to the premises;

UNOFFICIAL COPY

Property of Cook County Clerk's Office

25. The word "Mortgagor" when used herein shall include: (a) the original Mortgagor named in the premises hereof; (b) said original Mortgagor's successors and assigns; and (c) all persons from time to time of the Premises. The word "Mortgage" when used herein shall include all successors and assigns of the Mortgage identified in the premises hereof.

Definitions of "Mortgagor," and "Mortgage"

27. This Mortgage and all provisions hereof shall be binding upon Mortgagor and all persons claiming under or through Mortgagor and shall inure to the benefit of the successors and assigns of the Mortgage.

Binding on Successors and Assigns

28. "Default Rate" as used herein shall mean interest at the annual rate equal to the higher of (x) the "Fixed Rate" (defined in the Loan Agreement) plus two percent (2%) or (y) the "Corporate Base Rate" (defined in the Loan Agreement) plus two percent (2%) -- but in no event higher than the maximum rate, if any, permitted by applicable law.

Default Rate

(1) that, to the best of Mortgagor's knowledge, each of the parcels of real estate constituting the Premises have adequate water, gas and electrical supply, storm and sanitary sewerage facilities, other required public utilities, fire and police protection, and means of access between each of the parcels and public highways, and Mortgagor knows of no fact or condition which would result in the termination or impairment of any of the foregoing; that none of the foregoing will be materially delayed or impeded by virtue of any requirements under any applicable environmental protection or control laws, rules or conditions; and that the Premises comply in all material respects with all applicable environmental protection or control laws, rules and regulations.

(2) that, to the best of Mortgagor's knowledge, all approvals required to operate the Premises have been obtained, and all laws, rules and regulations of the state in which the Premises are located or any subdivision thereof relating to the operation of the Premises have been complied with; and

that Mortgagor has no notice or knowledge of any structural defect in the Premises;

3619875

3619875

UNOFFICIAL COPY

Property of Cook County Clerk's Office

32. Mortgages, upon request by Mortgages from time to time, shall execute, acknowledge and deliver to Mortgages, a security agreement, financing statement or other similar security instruments, in form reasonably satisfactory to Mortgages, covering all property of any kind whatsoever which Mortgages may hereafter acquire, which in the opinion of

Execution of Separate Security Agreement, Financing Statements,

and

(b) Mortgages agree to deliver to Mortgages, on each of the third and fifth anniversaries of the "Loan Closing Date" (defined in the Loan Agreement), evidence of the value of the Premises in form and from a person satisfactory to the Mortgages. If such evidence of value shows, in Mortgages' judgment, that the fair market value of the Premises as of the anniversary date in question is more than 10% higher than the amount of the ALTA Loan Policy provided to Mortgages at the time this Mortgage is executed, then Mortgages shall obtain, at its sole cost and expense, an endorsement to said policy increasing the amount of said policy to the amount shown on the evidence of value.

31. (a) Mortgages shall pay all title insurance premiums, escrow charges, filing, registration or recording fees, and all expenses incident to the execution and acknowledgment of this Mortgage and all federal, state, county and municipal taxes, and other taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Mortgage and the obligations.

Filing and Recording Fees

30. Mortgages agrees that the obligations: (a) constitute a business loan which comes within the purview of subparagraph (1)(c) of Section 4 of "An Act in relation to the rate of interest and other charges in connection with sales on credit and the lending of money," approved May 24, 1879, as amended (111, Rev. Stats. 1985 ed., Ch. 17, Sec. 6404(1)(c)); and (b) are exempted transactions under the Truth-in-Lending Act, 15 U.S.C. Sec. 1601 et seq.

Business Loan Recital

29. 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.

Captions

0200123

0266198

Office

UNOFFICIAL COPY

Property of Cook County Clerk's Office

3619878 3780143

34. The proceeds of the indebtedness evidenced by the Obligations are to be disbursed by Mortgagee in accordance with the provisions contained in the Loan Agreement. The Loan Agreement is incorporated herein by express reference. All advances and indebtedness arising and accruing under the Loan Agreement from time to time shall be secured hereby to the full extent of the amount stated to be secured hereby and according to law, and in any event the occurrence of any Loan Agreement Default (defined in Section 12 hereinafter) shall constitute a Mortgage Default under this Mortgage existing Mortgage to all of the rights and remedies conferred upon Mortgagee by the terms of this Mortgage. Except as otherwise specifically provided herein, in the event of any

Disbursement of Loan Proceeds

33. Mortgagee and Mortgagee intend and believe that each provision in this Mortgage conforms with all applicable local, state and federal law and judicial decisions. However, if any provision or provisions, or if any portion of any provision or provisions, in this Mortgage are found by a court of law to be in violation of any applicable local, state or federal ordinance, statute, law, administrative or judicial decisions, or public policy, and if such court should declare such portion, provision or provisions of this Mortgage to be illegal, invalid, unenforceable or unenforceable as written, then it is the intent both of Mortgagee and Mortgagee that such portion, provision or provisions shall be given force to the fullest possible extent that they are legal, valid and enforceable, that the remainder of this Mortgage shall be construed as if such illegal, invalid, unenforceable or unenforceable portion, provision or provisions were not contained therein, and that the rights, obligations and interest of Mortgagee and Mortgagee under the remainder of this Mortgage shall continue in full force and effect.

Partial Invalidation

Mortgagee is essential to the operation of the Premises and which constitutes goods within the meaning of the UCC, and Mortgagee will further execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, any financing statement, affidavit, continuation statement or certificate or other document as Mortgagee may reasonably request in order to perfect, preserve, maintain, continue and extend the security interest under and the priority of this Mortgage and such security instrument. Mortgagee further agrees to pay to Mortgagee on demand all costs and expenses incurred by Mortgagee in connection with the preparation, execution, recording, filing and re-filing of any such document.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

39. This Mortgage also secures all future advances and revolving credit granted under the Loan Agreement made within twenty years from the date hereof, which future advances and revolving credit shall have the same priority as if all such

Revolving Credit, Future Advances

38. No offset or claim that Mortgagor now has or may have in the future against Mortgages shall relieve Mortgagor from paying any amounts due under or with respect to the Obligations or from performing any other duties contained herein or secured hereby.

No Offset

37. This Mortgage, the Loan Agreement, the Term Notes, the Revolving Notes and the other Loan Documents shall be construed, interpreted and governed by the laws of the state of Illinois.

Applicable Law

36. So long as any of the Obligations remain unpaid, unperformed, unassisted, or undischarged, it Mortgagor shall, without Mortgagee's prior written consent, transfer, convey, alien, lease, pledge, hypothecate or mortgage the Premises or any portion thereof or any interest therein, either voluntarily or involuntarily, or enter into a contract to do any of the foregoing, then, and in any such event, such action shall constitute a Mortgage Default.

Maintenance of Mortgagor's Interest

35. At all times, regardless of whether any loan proceeds have been disbursed, this Mortgage secures (in addition to any loan proceeds disbursed from time to time) the payment of any and all expenses and advances due to or incurred by Mortgagee in connection with the indebtedness to be secured hereby and which are to be reimbursed by Mortgagor under the terms of this Mortgage or the Loan Agreement; provided, however, that in no event shall the total amount of loan proceeds disbursed plus such additional amounts exceed 20% of the total amount of the Credit.

Mortgagee's Lien for Service Charge and Expenses

34. In the event of any inconsistency between the terms of this Mortgage and the Loan Agreement, the terms and provisions of this Mortgage shall in each instance govern and control to the extent of such conflict or inconsistency.

6410873
6486199C

UNOFFICIAL COPY

Property of Cook County Clerk's Office

41. This mortgage is executed by CHICAGO TITLE AND TRUST COMPANY, not personally, but as trustee hereinafter in the exercise of the power and authority conferred upon and vested in it as such trustee (and said corporation 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 Loan Agreement, the Term Notes or the Revolving Notes shall be construed as creating any liability on said trustee or on said bank personally to pay or any interest that may accrue thereon, or any indebtedness accruing

Trustee's Exculpation

40. This mortgage is subject and subordinate to that certain Constitution and Permanent Mortgage dated September 11, 1978 recorded with the Cook County, Illinois, Registrar of Titles on September 11, 1978, as document number 3046227 ("First Mortgage") made by Mortgageor's predecessor in interest, to Connecticut Mutual Life Insurance Company as mortgagee and agrees to perform fully and faithfully all covenants, agreements and obligations on the part of mortgageor thereunder, and to deliver to mortgagee a copy of each and every notice sent by First Mortgagee to mortgageor or vice-versa. If First Mortgagee should ever waive the requirement for tax and insurance premium deposits under the provisions of the First Mortgage, mortgageor shall make such deposits with mortgagee who shall hold and apply such deposits in the same manner as provided the First Mortgage.

First Mortgage

40. This mortgage is subject and subordinate to that certain Constitution and Permanent Mortgage dated September 11, 1978 recorded with the Cook County, Illinois, Registrar of Titles on September 11, 1978, as document number 3046227 ("First Mortgage") made by Mortgageor's predecessor in interest, to Connecticut Mutual Life Insurance Company as mortgagee and agrees to perform fully and faithfully all covenants, agreements and obligations on the part of mortgageor thereunder, and to deliver to mortgagee a copy of each and every notice sent by First Mortgagee to mortgageor or vice-versa. If First Mortgagee should ever waive the requirement for tax and insurance premium deposits under the provisions of the First Mortgage, mortgageor shall make such deposits with mortgagee who shall hold and apply such deposits in the same manner as provided the First Mortgage.

40. This mortgage is subject and subordinate to that certain Constitution and Permanent Mortgage dated September 11, 1978 recorded with the Cook County, Illinois, Registrar of Titles on September 11, 1978, as document number 3046227 ("First Mortgage") made by Mortgageor's predecessor in interest, to Connecticut Mutual Life Insurance Company as mortgagee and agrees to perform fully and faithfully all covenants, agreements and obligations on the part of mortgageor thereunder, and to deliver to mortgagee a copy of each and every notice sent by First Mortgagee to mortgageor or vice-versa. If First Mortgagee should ever waive the requirement for tax and insurance premium deposits under the provisions of the First Mortgage, mortgageor shall make such deposits with mortgagee who shall hold and apply such deposits in the same manner as provided the First Mortgage.

071084C

3619578

UNOFFICIAL COPY

Property of Cook County Clerk's Office

3750143

3619873

Property of Cook County Clerk's Office

(TYPE)

1921

BY

ATTEST

[Signature]

CHICAGO TITLE AND TRUST COMPANY
not personally, but as trustee
as aforesaid
BY: *[Signature]*
TIT: *[Signature]*

IN WITNESS WHEREOF, Mortgagee has caused these
present to be signed by duly authorized officers as of the day
and year first above written.

hereunder, or to perform any covenant either express or implied
herein contained, 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
said trustee and said corporation personally are concerned, the
legal holder or holders of the Term Notes and the revolving
notes and the owner or owners of any indebtedness accruing
hereunder shall look solely to the premises hereby conveyed for
the payment thereof, by the enforcement of the lien hereby
created, in the manner herein and in said Notes provided, and
by enforcement of any and all other security given to secure
the payment of the Obligations and each of them.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

3 4 1 0 3 7 3 0 1 4 3

This instrument was prepared by
and after recording return to:
Douglas H. McNaughton, Esq.
Hopkins & Sutter
Three First National Plaza
Chicago, Illinois 60602

ATTEST:

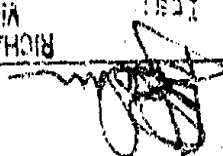
[SEAL]

BY: _____
[SEAL]

PITTSBURGH NATIONAL BANK

ATTEST:


[SEAL]

BY: 
RICHARD J. SALMON
Vice President

SECURITY PACIFIC NATIONAL BANK

ATTEST:

[SEAL]

BY: 

[SEAL]

THE FIRST NATIONAL BANK OF
CHICAGO, Individually and as Agent

0 3 6 1 9 3 7 8

CV10822C

3619878

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

0 0 7 2 0 1 4 3

3780143

Chicago, Illinois 60602
Three First National Plaza
Hauptman & Butler
Douglas E. Hauptman, Esq.

This instrument was prepared by
and after recording therein as:

3619875

Property of Cook County Clerk's Office

ATTEST: _____
[REDACTED]

BY: _____
[REDACTED]
FIRST NATIONAL BANK

ATTEST: _____
[REDACTED]

BY: _____
[REDACTED]

SECURITY PACIFIC NATIONAL BANK

ATTEST: _____
[REDACTED]

BY: _____
[REDACTED]

THE FIRST NATIONAL BANK OF
CHICAGO, Individually and as Agent

0 3 6 1 9 8 7 8

UNOFFICIAL COPY

Property of Cook County Clerk's Office

03619878

03619878

The undersigned, CRINAL KENT FOOD COMPANY, INC. (the "Company"), sole beneficiary of Chicago Title and Trust Company Trust No. 486393-3, under Trust Agreement dated May 24, 1978, and one of the makers of the Term Notes and the Revolving Notes, hereby executes this Mortgage for the purpose of joining herein, making the assignments, grants of security interests, transfers and conveyances hereunder, and making, undertaking, and agreeing to the covenants, agreements, obligations and representations herein, all in accordance with and subject to the following:

A. The Company hereby grants to Mortgagee, as security for the obligations, a security interest in all of the property included in the "Premises" which constitute fixtures under the UCC and also all of said property which constitutes personal property not constituting a part and parcel of the real estate.

B. The Company hereby assigns to Mortgagee, as security for the obligations, all of the rents, issues and profits and all of the leases, lettings, and other agreements for the use as occupancy of the Premises, now or hereafter made, as more fully described in Section 16 of the Mortgage.

C. The Company hereby covenants and agrees to be bound by, and to be deemed to have entered into and made, all of Mortgagee's covenants, agreements, obligations and representations (which shall constitute representations and warranties of the Company) under the following provisions of the Mortgage with the same force and effect as if they were fully set forth herein verbatim: the last unnumbered paragraph of page 4, the first paragraph at the top of page 5 (with respect to the personal property described in paragraph A hereinafter), Section 12, the last unnumbered paragraph of Section 13, Section 14 (with respect to the property described in paragraph A hereinafter), Section 17, the last unnumbered paragraph of Section 18, Section 19 (with respect to the property described in paragraph A hereinafter), Section 16, Section 19, Section 18 (with respect to monies received by Mortgagee pursuant to Section 16), Section 19 (with respect to the property described in paragraph A hereinafter), Section 22, Section 23, and Sections 25 through 42, inclusive.

JOINED BY THE COMPANY

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

0 3 7 8 0 1 4 3

3760143

3619878

Property of Cook County Clerk's Office

(SEAL)

Secretary

ATTEST:

BY X President

ORVAL KENT FOOD COMPANY, INC.

Executed in Chicago, Illinois, this 17th day of July, 1987

0 3 5 4 9 8 7 8

UNOFFICIAL COPY

Property of Cook County Clerk's Office

NOTARIAL

Property of Cook County

Handwritten signature

November 25, 1989

My Commission Expires:

Handwritten signature

NOTARY PUBLIC

GIVEN under my hand and Notarial Seal this *22nd* day

Handwritten signature

of November, 1989

personally known to me to be the same persons whose names are
subscribed to the foregoing instrument as such *John J. ...*
and *William ...* Secretary, respectively, appeared before me
this day in person and acknowledged that they signed and
delivered said instrument as such officers of said corporation,
as their own free and voluntary act and as the free and
voluntary act of the corporation for the uses and purposes
therein set forth.

John J. ...
Secretary of said Corporation,
Kent Food Company, Inc., a Delaware corporation, and *William ...*
President of said Corporation,
for said County, in the state aforesaid. DO HEREBY CERTIFY that

STATE OF ILLINOIS
COUNTY OF COOK

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

0 8 7 3 0 1 4 3

0 8 7 3 0 1 4 3

Property of Cook County Clerk's Office

0 2 6 1 9 8 7 8

UNOFFICIAL COPY

CHICAGO TITLE INC
71-13-820

3780143

1987 MAY 26 PM 2:35
HAROLD W. DRAYN
REGISTRAR OF TITLES

02000000

71-13-820

Property of Cook County Clerk

Sept 8, 1987

My Commission Expires:

Notary Public
Sheila Davenport

of Illinois, 1987
MAY 1987

GIVEN under my hand and Notarial Seal this 26th day

uses and purposes therein set forth.
voluntarily act of the corporation, as trustee aforesaid, for the
as their own free and voluntary act and as the free and
delivered said instrument as such officer of said corporation,
this day in person and acknowledged that they signed and
and Notary Secretary, respectively, appeared before me
to the foregoing instrument as such
known to me to be the same persons whose names are subscribed
Notary Secretary of said corporation, personally
described under the foregoing instrument, and ALDA DI MAVO
Trust company, which is the trustee under the Trust Agreement
of Chicago Title and
for said county, in the State aforesaid, DO HEREBY CERTIFY that
a Notary Public in and
SHEILA DAVENPORT

71-13-820

3780143

HAROLD W. DRAYN
REGISTRAR OF TITLES

89 MAR 17 PM 4:32

3780143

Submitted by
Address
Promise #3780143
Deliver certificate
Address
County of Cook
State of Illinois
Notified

CHICAGO TITLE INC

71-13-820