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MORTGAGE, SECURITY AGREEMENT,

ASSIGNMENT OF LEASES AND RENTS, AND

FINANCING STATEMENT

THIS MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS, AND FINANCING STATEMENT (the "Mortgage") is made as of July 17, 1991, between AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, not personally but solely as Trustee under Trust Agreement dated as of August 9, 1989 and known as Trust No. 106920-08 (the "Mortgagor"), and THE FIRST NATIONAL BANK OF CHICAGO (the "Mortgagee").

WHEREAS Mortgagor and RUSH WALTON LIMITED PARTNERSHIP, an Illinois limited partnership ("Beneficiary") have concurrently herewith executed and delivered to Mortgagee a note bearing even date herewith (the "Note") in the principal sum of SIX MILLION TWO HUNDRED FIFTY THOUSAND DOLLARS ($6,250,000.00) made payable to the order of Mortgagee, in and by which Note Mortgagor and Beneficiary promise to pay the said principal sum, or so much thereof as has been advanced, and interest at the rate and in installments as provided in the Note, with a final payment of the outstanding principal balance and accrued and unpaid interest being due on or before May 1, 1994. All of said principal and interest is made payable at such place as the holder or holders of the Note (the "Holders") may from time to time, in writing appoint, and in absence of such appointment, then by bank wire to Mortgagee.

NOW, THEREFORE, Mortgagor, in consideration of the debt evidenced by the Note and to secure the timely payment of both principal and interest in accordance with the terms and provisions of the Note and in accordance with the terms, provisions and limitations of this Mortgage, and to secure the performance of the covenants and agreements contained herein and in the Note, the Loan Agreement (as such term is defined in Section 33 hereof) and any other documents evidencing and securing the loan secured hereby (collectively the "Loan Documents") to be performed by Mortgagor or Beneficiary, does by these presents CONVEY, MORTGAGE, GRANT, REMISE, TRANSFER AND ASSIGN unto Mortgagee, its successors and assigns, the real estate described in Exhibit A attached hereto (the "Land") and made a part hereof and all of its estate, right, title and interest therein, situated, lying, and being in the City of Chicago, County of Cook and State of Illinois, which, with the property hereinafter described, is referred to as the "Premises";

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7-22-91 Description of subject property on Cert # M 36158 + other property 7309317 Amor 2c

NOTE IDENTIFIED

TOGETHER with all leasehold estates, right, title and interest of the Mortgagor in any and all leases, subleases, management agreements, arrangements, concessions, or agreements, written or oral, relating to the use and occupancy of the Land and improvements or any portion thereof located thereon, now or hereafter existing or entered into;

TOGETHER with 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 accounts receivable derived from the operation of the Premises;

TOGETHER with any and all buildings and improvements now or hereafter erected on the Land, including, but not limited to, the fixtures, attachments, appliances, equipment, machinery, and other articles attached to said buildings and improvements and all tangible personal property owned by Mortgagor now or any time hereafter located on or at the Land or used in connection therewith, including, but not limited to, all goods, machinery, tools, equipment (including fire sprinklers and alarm systems, air conditioning, heating, boilers, refrigerating, electronic monitoring, water, lighting, power, sanitation, waste removal, entertainment, recreational, window or structural cleaning rigs, maintenance and all other equipment of every kind), lobby and all other indoor or outdoor furniture (including tables, chairs, planters, desks, sofas, shelves, lockers and cabinets) furnishings, appliances, inventory, rugs, carpets and other floor coverings, draperies, drapery rods and brackets, awnings, venetian blinds, partitions, chandeliers and other lighting fixtures, and all other fixtures, apparatus, equipment, furniture, furnishings, and articles used in connection with the operation of restaurants, retail stores, and offices on the Land, it being understood that the enumeration of any specific articles of property shall in nowise result in or be held to exclude any items of property not specifically mentioned;

TOGETHER with all right, title and interest, if any, of Mortgagor in and to the streets and roads abutting the Land to the center lines thereof, any strips or gores within or adjoining the Land and the air space and right to use said air space above the Land;

TOGETHER with all of Mortgagor's rights and remedies at any time arising under or pursuant to § 365(h) of the United States Bankruptcy Code, 11 U.S.C. § 365(h), including, without limitation, all of Mortgagor's rights to remain in possession of the Premises thereunder;

TOGETHER with all right, title and interest of Mortgagor in and to all easements, rights, privileges and appurtenances belonging to the Land or the improvements located thereon, whether now owned or hereafter acquired by Mortgagor, including, without limitation, all right, title and interest of Mortgagor in and to all development rights, all rights of ingress and egress by pedestrians and motor vehicles to the Land and/or the improvements located thereon and to parking facilities on or within the improvements located thereon, all royalties and all rights appertaining to the use and enjoyment of the Land and/or the improvements located thereon, including, without limitation, all alley, drainage, crop, timber, agricultural, horticultural, mineral, water, oil and gas rights;

TOGETHER with all right, title and interest of Mortgagor in and to all plans, specifications and drawings for any improvements now or hereafter located on the Land, all deposits (including tenants' security deposits and escrow deposits under contracts of sale), documents, contracts, rights, commitments, construction contracts, architectural agreements and general intangibles, and all permits, licenses, franchises, certificates and other rights and privileges relating to or obtained in connection with the Premises or any part thereof;

TOGETHER with all right, title and interest of Mortgagor in and to all proceeds arising from or by virtue of the sale, lease or other disposition, encumbrance or refinancing, of the Premises;

TOGETHER with all unearned premiums, whether accrued, accruing or to accrue under insurance policies now or hereafter obtained by Mortgagor, and all of Mortgagor's rights to proceeds of the conversion, voluntary or involuntary, of the Land, the improvements located thereon and/or any other property or rights encumbered or conveyed hereby, or any part thereof, into cash or liquidated claims, including, without limitation, proceeds of hazard and title insurance and all awards, judgments and compensation heretofore and hereafter made to Mortgagor as owner of the Land, the improvements located thereon and/or any other property or rights encumbered or conveyed hereby, by any governmental or other authority for the taking by eminent domain, condemnation or otherwise of all or any part of the Land, the improvements located thereon and/or any other property or rights encumbered or conveyed hereby or any easement therein, including, but not limited to, awards for any change of grade or closing of streets, and all of Mortgagor's rights to refunds of real estate taxes and assessments;

TOGETHER with all other property (real or personal) owned by Mortgagor from time to time located at or used in connection

with any portion of the Premises or the operation or maintenance thereof.

All of the land, estate and property hereinabove described, real, personal and mixed, whether affixed 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 appropriated 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.

Mortgagor covenants that it is lawfully seized of the Premises, that the same are unencumbered except for the Permitted Exceptions (as defined in the Loan Agreement), and that it has good right, full power and lawful authority to convey and mortgage the same, and that it will warrant and forever defend said Premises and the quiet and peaceful possession of the same against the lawful claims of all persons whomsoever.

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

IT IS FURTHER UNDERSTOOD AND AGREED THAT:

<u>Maintenance, Repair and Restoration of Improvements, Payment of Liens, Etc.</u>

1. Mortgagor shall (a) subject to the terms of <u>Section 6</u> hereof, either promptly repair, restore or rebuild any buildings or improvements now or hereafter on the Premises which may become damaged or be destroyed or demolish the remainder of such buildings so that they are in compliance with any applicable laws and otherwise in a safe condition; (b) keep the Premises in good condition and repair, without waste, and free from mechanics' liens or other liens or claims for lien; provided, however, that Mortgagor shall have the right to contest in good faith and with reasonable diligence the validity of any such lien or claim in accordance with the terms and conditions of <u>Section 5.2</u> of the Loan Agreement; (c) pay when due any indebtedness which may be secured by a lien or charge on the Premises and comply with all requirements of all loan documents evidencing or securing such indebtedness, and, upon request, exhibit satisfactory evidence of the discharge of such prior lien to Mortgagee; (d) comply with all requirements of law, municipal ordinances or restrictions of record with respect to the Premises and the use thereof; (e) initiate or acquiesce in no zoning variation or reclassification without Mortgagee's written consent; and (f) pay each item of

indebtedness secured by this Mortgage when due according to the terms hereof or of the Note.

Payment of Taxes.

2. 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 ("Impositions") when due, and shall, upon written request, furnish to Mortgagee duplicate receipts therefor. Mortgagor may, in good faith and with reasonable diligence, contest the validity or amount of any such Impositions in accordance with the terms and conditions of Section 5.3 of the Loan Agreement. In case Mortgagor shall fail to prosecute such contest with reasonable diligence or shall otherwise fail to comply with the terms of Section 5.3 of the Loan Agreement, Mortgagee may at its option apply the money so deposited in payment of or on account of such Impositions, or that part thereof then unpaid, together with all penalties and interest thereon. If the amount of the money so deposited shall be insufficient for the payment in full of such Impositions, together with all penalties and interest thereon, Mortgagor shall forthwith upon demand either (a) deposit with Mortgagee a sum which when added to the funds then on deposit shall be sufficient to make such payment in full, or (b) in case Mortgagee shall have applied funds on deposit on account of such Impositions, restore said deposit to a sufficient amount. Mortgagee shall, upon the final disposition of such contest, apply the money so deposited in full payment of such Impositions or that part thereof then unpaid, together with all penalties and interest thereon (provided Mortgagor is not then in default) when so requested in writing by Mortgagor and furnished with sufficient funds to make such payment in full with an official bill for such Impositions.

Tax Deposits

3. Commencing at such time as Mortgagee may request after the occurrence of any Event of Default under this Mortgage or the other Loan Documents, and on the first day of each month thereafter until the indebtedness secured by this Mortgage is fully paid, Mortgagor covenants and agrees to deposit 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 First National Bank of Chicago in Chicago, Illinois, a sum equal to one-twelfth of the last total annual taxes and assessments for the last ascertainable year (general and special) on the Premises (unless said taxes are based upon assessments which exclude the improvements or any part thereof now constructed, or to be constructed, in which event the amount of such deposits shall be based upon Mortgagee's

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reasonable estimate as to the amount of taxes and assessments to be levied and assessed). Mortgagor, concurrently with the first monthly deposit of taxes required hereunder, will also deposit with Mortgagee an amount, based upon the taxes and assessments so ascertainable or so estimated by Mortgagee, as the case may be, for taxes and assessments on said Premises, on the accrual basis, for the period commencing on January 1 of the year succeeding the most recent year for which all taxes and assessments have been paid, and terminating on the date of such first monthly deposit. Such deposits are to be held in trust without any allowance of interest and are to be used for the payment of taxes and assessments (general and special) on the Premises next due and payable when they become due. If the funds so deposited are insufficient to pay any such taxes or assessments (general and special) for any year when the same shall become due and payable, Mortgagor shall, within ten (10) days after receipt of demand therefor from Mortgagee, deposit such additional funds as may be necessary to pay such taxes and assessments (general and special) in full. If the funds so deposited exceed the amount required to pay such taxes and assessments (general and special) for any year, the excess shall be applied toward a subsequent deposit or deposits due from Mortgagor.

Insurance and Premium Deposits

4. (a) Mortgagor has submitted to Mortgagee the policies of casualty, rental interruption, public liability, and so-called "dram shop" insurance presently carried with respect to the Premises (the "Current Insurance Policies"). Mortgagor agrees, at its sole expense, to maintain or cause to be maintained casualty, rental interruption, public liability, and so-called "dram shop" policies of insurance with respect to the Premises in the same form, with the same companies, endorsements, and coverage, and in at least the same amounts as the Current Insurance Policies.

(b) Certificates evidencing all insurance referred to in this Section 4 and receipts for the payment of premiums thereon satisfactory to Mortgagee shall be delivered to and held by Mortgagee. All insurance policies required pursuant to the terms hereof shall contain a provision requiring at least thirty (30) days' notice to Mortgagee prior to any cancellation or modification and shall be endorsed with a standard, non-contributory mortgagee's clause in favor of Mortgagee. At least thirty (30) days before expiration of such policies, Mortgagor shall renew such policies, pay the premiums therefor and give Mortgagee satisfactory evidence of such renewal and payment. In the event of loss, Mortgagor shall give immediate written notice to its insurance carrier and Mortgagee.

(c) Mortgagor agrees to pay all premiums on such insurance as they become due, and will not permit any condition to exist on or with respect to the Premises which would wholly or partially invalidate any insurance thereon. Mortgagee shall not by the fact of approving, disapproving, accepting, preventing, obtaining or failing to obtain any such insurance, incur any liability for the form or legal sufficiency of insurance contracts, solvency of insurers, or payment of losses, and Mortgagor hereby expressly assumes full responsibility therefor. Mortgagor hereby authorizes and empowers Mortgagee, during the continuation of an Event of Default (as such term is hereinafter defined), at Mortgagee's option and in Mortgagee's sole discretion as attorney-in-fact for Mortgagor, to pay premiums, to make proof of loss, to adjust and compromise any claim under insurance policies, to appear in and prosecute any action arising from such insurance policies, to collect and receive insurance proceeds and to deduct therefrom Mortgagee's expenses incurred in the collection of such proceeds. Mortgagor hereby absolutely assigns and transfers to Mortgagee all of Mortgagor's right, title and interest in and to all such policies and any unearned premiums paid thereon and Mortgagee shall have the right, but not the obligation, to assign the same to any purchaser of the Premises at any foreclosure or other sale; provided, however, that as long as no Event of Default is continuing, Mortgagor shall have the right under a license granted hereby, and Mortgagee hereby grants to Mortgagor a license, to exercise rights under said policies and in and to said premiums subject to the provisions of this Mortgage. Said license shall be revoked automatically during the continuation of an Event of Default.

(d) Mortgagor shall not take out separate insurance relating to the Premises 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, non-contributory mortgagee clause acceptable to Mortgagee. Mortgagor shall immediately notify Mortgagee whenever any such separate insurance is taken out and shall promptly deliver to Mortgagee the original policy or policies of such insurance or certificates of insurance or renewal binders reasonably acceptable to Mortgagee evidencing such policies.

(e) Commencing at such time as Mortgagee may request after the occurrence of any Event of Default under this Mortgage or the other Loan Documents, and on the first day of each month thereafter until the indebtedness secured by this Mortgage is fully paid, Mortgagor covenants and agrees

to deposit 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 First National Bank of Chicago in Chicago, Illinois, an installment of the premium or premiums that will become due and payable to renew the insurance as required in Section 4(a) hereof. Each of such installments shall be in an amount which, by the payment of approximately equal installments, will result in there accumulating in the hands of the depositary a sufficient amount to pay renewal premiums upon such policies of insurance, at least one month prior to the expiration date or dates of the policy or policies to be renewed; such deposits to be held without any allowance of interest and to be used for renewal of such insurance policies. If the funds so deposited are insufficient to pay all premiums for such renewals, Mortgagor shall within ten (10) days after receipt of demand therefor from Mortgagee, deposit such additional funds as may be necessary to pay such premiums. If the funds so deposited exceed the amount required to pay such premiums, the excess shall be applied toward a subsequent deposit or deposits due from Mortgagor.

Mortgagee's Interest in and Use of Deposits

5. In the event of an Event of Default, Mortgagee may, at its option, without being required to do so, apply any moneys at the time on deposit pursuant to any provision of this Mortgage, as any one or more of the same may be applicable, on any of Mortgagor's obligations herein or in the Note or Loan Documents contained, in such order and manner as Mortgagee may elect. When the indebtedness secured hereby has been fully paid, any remaining deposits shall be paid to Mortgagor. Such deposits are hereby pledged as additional security for the indebtedness hereunder and shall be held to be irrevocably applied by the depositary for the purposes for which made hereunder and shall not be subject to the direction or control of Mortgagor; provided, however, that neither Mortgagee nor said depositary shall be liable for any failure to apply to the payment of taxes and assessments or insurance premiums any amount so deposited unless Mortgagor, while not in default hereunder, shall have requested said depositary in writing to make application of such funds to the payment of the particular taxes or assessments or the payment of the particular insurance premiums as the case may be for payment of which they were deposited, accompanied by the bills for such taxes and assessments or insurance premiums.

Adjustment of Losses with Insurer and Application of Proceeds of Insurance

6. In case of loss, Mortgagee shall have the right (but not the obligation) to settle any insurance claim filed for more

than $500,000.00 and any claim filed for $500,000.00 or less shall be adjusted and settled by Mortgagor provided that Mortgagee shall have the right to settle any claims that Mortgagor has not settled on or before ninety (90) days after the date of such loss. Mortgagee is at all times authorized to collect and receipt for any insurance money. In all cases, Mortgagee shall have the right (but not the obligation) to collect, retain and apply to the indebtedness of Mortgagor and/or Beneficiary under the Note, the Loan Agreement and the other Loan Documents all insurance proceeds (after deduction of all expense of collection and settlement, including attorneys' and adjusters' fees and expenses). Any proceeds remaining after application to the indebtedness of Mortgagor and/or Beneficiary under the Note, the Loan Agreement and the other Loan Documents shall be paid by Mortgagee to Mortgagor or the party then entitled thereto. In case of the foreclosure of this Mortgage, the court in its judgment may provide that Mortgagee, as judgment creditor, may cause a new or additional loss clause to be attached to each of said policies making the loss thereunder payable to it as such judgment creditor; and any such foreclosure judgment may further provide, unless the right of redemption has been waived pursuant to Section 15-1601(b) of the Illinois Mortgage Foreclosure Law, as amended from time to time ("Act"), that in case of redemption under said judgment, pursuant to the Act, then, and in every such case, the redemptor 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 redemptor. In the event of foreclosure sale, Mortgagee is hereby authorized, but not required, without the consent of Mortgagor, to assign or cause a receiver 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.

Stamp Tax

7. If, by the laws of the United States of America, or of any state or political subdivision having jurisdiction over Mortgagor, any tax is due or becomes due in respect of the issuance of the Note, or 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 Mortgagee, its successors or assigns, against any liability incurred by reason of the imposition of any tax on the issuance of the Note, or recording of this Mortgage.

Prepayment Privilege

8. Mortgagor shall have the privilege of making prepayment on the principal of the Note in whole or in part, in accordance with the terms and conditions set forth in the Note.

Effect of Extensions of Time and Amendments

9. If the payment of the indebtedness secured by this Mortgage 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 the 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, if any, against all such persons being expressly reserved by Mortgagee, notwithstanding such extension, variation or release. Any person or entity taking a junior mortgage or other lien upon the Premises or any interest therein, shall take said lien subject to the rights of Mortgagee herein to amend, modify, and supplement this Mortgage, the Note, the Loan Documents, or any other document or instrument evidencing, securing, or guaranteeing the indebtedness hereby secured and to vary the rate of interest and the method of computing the same, and to impose additional fees and other charges, and to extend the maturity of said indebtedness, and to grant partial releases of the lien of this Mortgage, in each and every case without obtaining the consent of the holder of such junior lien and without the lien of this Mortgage losing its priority over the rights of any such junior lien. Nothing in this Section contained shall be construed as waiving any provision contained herein which provides, among other things, that it shall constitute an Event of Default if the Premises be sold, conveyed, or encumbered.

Effect of Changes in Laws Regarding Taxation

10. In the event of the enactment after this date of any law of the State of Illinois or any political subdivision thereof deducting from the value of land for the purpose of taxation any lien thereon, or imposing upon 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 the 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 Holders, then, and in any such event, Mortgagor, upon demand by Mortgagee, shall pay such taxes or assessments, or reimburse Mortgagee therefor; provided, however, that if in the opinion of counsel for 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 beyond the maximum amount permitted by law, then and in such event, Mortgagee may elect, by notice in writing given to Mortgagor, to declare all of the indebtedness secured hereby to be and become due and payable sixty (60) days from the giving of such notice.

Mortgagee's Performance of Defaulted Acts; Protective Advances; Subrogation

11. In case Mortgagor fails to perform any of its covenants and agreements herein or in the Note or any Loan Documents, Mortgagee may, but need not, make any payment or perform any act herein or therein 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 any Prior Encumbrances (as hereinafter defined), 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 the Premises or contest any tax or assessment. Mortgagee shall use reasonable effects to provide Mortgagor with written notice prior to taking any actions permitted pursuant to the rights granted by the foregoing terms of this Section 11. Notwithstanding the foregoing, however, Mortgagor acknowledges and agrees, that it has no right to any such notice and that the failure by Mortgagee to give such notice shall not give rise to any additional rights of Mortgagor to contest any of Mortgagee's actions taken pursuant to this Section 11.

All advances, disbursements and expenditures (collectively "advances") made by Mortgagee before and during foreclosure, prior to sale, and where applicable, after sale, for the following purposes, including interest thereon at the Default Rate (as such term is defined in Section 28 hereof), are hereinafter referred to as "Protective Advances";

(a) advances pursuant to this Section 11;

(b) advances in accordance with the terms of this Mortgage to: (i) protect, preserve or restore the Premises; (ii) preserve the lien of this Mortgage or the priority thereof; or (iii) enforce this Mortgage, as referred to in Subsection (b)(5) of Section 15-1302 of the Act;

(c) payments of (i) when due installments of principal, interest or other obligations in accordance with the terms of any Prior Encumbrance; (ii) when due installments of real estate taxes and other Impositions; (iii) other obligations authorized by this Mortgage; or (iv) with court approval any other amounts in connection

with other liens, encumbrances or interests reasonably necessary to preserve the status of title, all as referred to in the first paragraph of this Section of this Mortgage and in Section 15-1505 of the Act;

(d) attorneys' fees and other costs incurred in connection with the foreclosure of this Mortgage as referred to in Sections 1504 (d)(2) and 15-1510 of the Act and in connection with any other litigation or administrative proceeding to which the Mortgagee may be or become or be threatened or contemplated to be a party, including probate and bankruptcy proceedings, or in the preparation for the commencement or defense of any such suit or proceeding; including filing fees, appraisers' fees, outlays for documents and expert evidence, witness fees, stenographer's charges, publication costs, and costs (which may be estimated as to items to be expended after entry of judgment) of procuring all such abstracts of title, title charges and examinations, foreclosure minutes, title insurance policies, Torrens certificates, appraisals, and similar data and assurances with respect to title and value as Mortgagee may deem reasonably necessary either to prosecute or defend such suit or, in case of foreclosure, to evidence to bidders at any sale which may be had pursuant to the foreclosure judgment the true condition of the title to or the value of the Premises;

(e) Mortgagee's fees and costs arising between the entry of judgment of foreclosure and the confirmation hearing as referred to in Subsection (b)(1) of Section 15-1508 of the Act;

(f) payment by Mortgagee of Impositions as required of Mortgagor by Sections 2 and 3 of this Mortgage;

(g) Mortgagee's advances of any amount required to make up a deficiency in deposits for instalments of Impositions, as required of Mortgagor by Sections 2 and 3 of this Mortgage;

(h) expenses deductible from proceeds of sale referred to in Subsections (a) and (b) of Section 15-1512 of the Act; and

(i) expenses incurred and expenditures made by Mortgagee for any one or more of the following: (i) if the Premises or any portion thereof constitutes one or more units under a condominium declaration, assessments imposed upon the owner thereof; (ii) if any of the Premises consists of an interest in a leasehold estate under a lease or sublease, rentals or other payments required to be made

by the lessee under the terms of the lease or sublease; (iii) premiums upon casualty and liability insurance made by Mortgagee whether or not Mortgagee or a receiver is in possession, if reasonably required, without regard to the limitation to maintaining of insurance in effect at the time any receiver or Mortgagee takes possession of the Premises imposed by Subsection (c)(1) of Section 15-1704 of the Act; (iv) payments required or deemed by Mortgagee to be for the benefit of the Premises or required to be made by the owner of the Premises under any grant or declaration of easement, easement agreement, reciprocal easement agreement, agreement with any adjoining land owners or other instruments creating covenants or restrictions for the benefit of or affecting the Premises; (v) shared or common expense assessments payable to any association or corporation in which the owner of the Premises is a member in any way affecting the Premises; (vi) operating deficits incurred by Mortgagee in possession or reimbursed by Mortgagee to any receiver; (vii) if the loan secured hereby is a construction loan, costs incurred by Mortgagee for completion of construction as may be authorized by the Loan Agreement; and (viii) any monies expended in excess of the face amount of the Note as recited in Section 33 of this Mortgage.

This Mortgage shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time the Mortgage is recorded, pursuant to Subsection (b)(5) of Section 15-1302 of the Act.

The Protective Advances shall, except to the extent, if any, that any of the same is clearly contrary to or inconsistent with the provisions of the Act, be included in:

(a) determination of the amount of indebtedness secured by this Mortgage at any time;

(b) the indebtedness found due and owing to the Mortgagee in the judgment of foreclosure and any subsequent amendment of such judgment, supplemental judgments, orders, adjudications or findings by the court of any additional indebtedness becoming due after entry of such judgment, it being hereby agreed that in any foreclosure judgment, the court may reserve jurisdiction for such purpose;

(c) if right of redemption has not been waived by this Mortgage, computation of the amount required to redeem, pursuant to Subsections (d)(2) and (e) of Section 15-1603 of the Act;

(d) determination of amounts deductible from sale proceeds pursuant to Section 15-1512 of the Act;

(e) determination of the application of income in the hands of any receiver or mortgagee in possession; and

(f) computation of any deficiency judgment pursuant to Subsections (b)(2) and (e) of Section 15-1508 and Section 15-1511 of the Act.

All moneys paid for Protective Advances or any of the other 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 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 such term is defined in Section 28 hereof). 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.

Should the proceeds of the Note 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 senior mortgage (as described in Subsection (i) of Section 15-1505 of the Act) or any other lien or encumbrance upon the Premises or any part thereof on a parity with or prior or superior to the lien hereof ("Prior Encumbrance"), then as additional security hereunder, the Mortgagee shall be subrogated to any and all rights, equal or superior titles, liens and equities, owned or claimed by any owner or holder 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 of record by the holder thereof upon payment.

Mortgagee's Reliance on Tax Bills, Etc.

12. Mortgagee 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 other prior lien, may do so without inquiry as to the validity or amount of any claim for lien which may be asserted.

Acceleration of Indebtedness in Case of Default

13. Any of the following events shall be deemed an Event of Default hereunder:

(a) Mortgagor and/or Beneficiary shall fail to pay when due the principal balance of the Note;

(b) Mortgagor and/or Beneficiary shall fail to pay when due any interest on the Note or any fee or other amount payable by Mortgagor hereunder or under any other Loan Document, and any such failure shall remain unremedied for five (5) business days after Mortgagee has furnished Mortgagor notice of such failure;

(c) Mortgagor shall fail to perform or observe any term, covenant or agreement contained herein to be performed or observed on its part (and not constituting an Event of Default under any other provision of this Section 13) and any such failure shall remain unremedied for thirty (30) days after written notice thereof shall have been given to Mortgagor by Mortgagee; provided, however, that if such default is susceptible of cure but cannot by the use of reasonable efforts be cured within thirty (30) days, such default shall not constitute an Event of Default under this Section 13 if and so long as (i) Mortgagor commences to cure such default within thirty (30) days and (ii) thereafter proceeds to cure such default continuously and diligently and in a manner reasonably satisfactory to Mortgagee and (iii) such default is cured not later than one hundred twenty (120) days after the expiration of such thirty (30) day period;

(d) Any representation or warranty made herein by or on behalf of Mortgagor and/or Beneficiary shall prove to have been incorrect in any material respect when made and any such default shall remain unremedied for thirty (30) days after written notice thereof shall be given to Mortgagor by Mortgagee; provided, however, that if such default is susceptible of cure but cannot by the use of reasonable efforts be cured within thirty (30) days, such default shall not constitute an Event of Default under this Section 13 if and so long as (i) Mortgagor commences to cure such default within thirty (30) days and (ii) thereafter it is proceeding to cure such default continuously and diligently and in a manner reasonably satisfactory to Mortgagee and (iii) such default is cured not later than one hundred twenty (120) days after the expiration of such thirty (30) day period; and

(e) Any default beyond any applicable grace or cure period occurs under the Loan Agreement or any of the other Loan Documents; or

(f) Any unpermitted transfer, conveyance, pledge or encumbrance as described in Section 31 hereof shall occur.

Upon the occurrence of any Event of Default hereunder, the whole of said principal sum hereby secured shall, at once, at the option of Mortgagee, become immediately due and payable, together with accrued interest thereon, without any presentment, demand, protest or notice of any kind to Mortgagor.

Foreclosure; Expense of Litigation; Indemnification

14. If an Event of Default has occurred hereunder, or when the indebtedness hereby secured, or any part 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 and pursue all remedies afforded to a mortgagee under and pursuant to the Act. In case of any foreclosure sale of the Premises, the same may be sold in one or more parcels.

It is further agreed that if default be made in the payment of any part of the secured indebtedness, as an alternative to the right of foreclosure for the full secured indebtedness after acceleration thereof, Mortgagee shall have the right to institute partial foreclosure proceedings with respect to the portion of said indebtedness so in default, as if under a full foreclosure, and without declaring the entire secured indebtedness due (such proceeding being hereinafter referred to as a "partial foreclosure"), and provided that if foreclosure judgment is entered pursuant to a partial foreclosure proceeding because of default of a part of the secured indebtedness, such judgment and sale pursuant thereto may be made subject to the continuing lien of this Mortgage for the unmatured part of the secured indebtedness; and it is agreed that such judgment or sale pursuant to a partial foreclosure, if so made, shall not in any manner affect the unmatured part of the secured indebtedness, but as to such unmatured part this Mortgage and the lien hereof shall remain in full force and effect just as though no foreclosure judgment or sale had been entered or made under the provisions of this Section. Notwithstanding the filing of any partial foreclosure or entry of a judgment of foreclosure therein, Mortgagee may elect at any time prior to a foreclosure sale pursuant to such judgment, to discontinue such partial foreclosure and to accelerate the secured indebtedness by reason of any uncured default or defaults upon which such partial foreclosure was predicated or by reason of any other defaults, and proceed with full foreclosure proceedings. It is further agreed that several foreclosure sales may be made pursuant to partial foreclosure without exhausting the right of full or partial foreclosure sale for any unmatured part of the secured indebtedness, it being the purpose to provide for a partial foreclosure sale of the secured indebtedness for any matured portion of the secured indebtedness without exhausting the

power to foreclose and to sell the Premises pursuant to any such partial foreclosure for any other part of the secured indebtedness whether matured at the time or subsequently maturing, and without exhausting any right of acceleration and full foreclosure.

Without limiting the liability of Mortgagor as set forth above, Mortgagor shall indemnify Mortgagee and its officers, directors, employees and agents, and hold them harmless from and against all claims, injury, damage, loss and liability of any and every kind to any persons or property by reason of (i) the operation or maintenance of the Premises; or (ii) any other action or inaction by, or matter which is the responsibility of, Mortgagor.

Application of Proceeds of Foreclosure Sale

15. The proceeds of any foreclosure sale of the Premises shall be distributed and applied in accordance with the provisions of Subsection (c) of Section 15-1512 of the Act. The judgment of foreclosure or order confirming the sale shall provide (after application pursuant to Subsections (a) and (b) of said Section 15-1512) for application of sale proceeds in the following order of priority: first, all items not covered by the provisions of said Subsections (a) and (b), which under the terms hereof constitute secured indebtedness additional to that evidenced by the Note, with interest thereon as herein provided; and second, all principal and interest remaining unpaid on the Note.

Appointment of Receiver

16. Upon, or at any time after the filing of a complaint to foreclose this Mortgage, the court in which such complaint is filed shall appoint a receiver of the Premises whenever Mortgagee, when entitled to possession, so requests pursuant to Section 15-1702(a) of the Act or when such appointment is otherwise authorized by operation of law. Such receiver shall have all powers and duties prescribed by Section 15-1704 of the Act, including the power to make leases to be binding upon all parties, including the Mortgagor after redemption, the purchaser at a sale pursuant to a judgment of foreclosure and any person acquiring an interest in the Premises after entry of a judgment of foreclosure, all as provided in Subsection (g) of Section 15-1701 of the Act. In addition, such receiver shall also have the following powers: (a) to extend or modify any then existing leases, which extensions and modifications may provide for terms to expire, or for options to lessees 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 deeds to a purchaser or purchasers at a

foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor and all persons whose interests in the Premises are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption, discharge of the mortgage indebtedness, satisfaction of any foreclosure judgment, or issuance of any certificate of sale or deed to any purchaser; and (b) 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 the period of receivership. The court from time to time, either before or after entry of judgment of foreclosure, 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 or included in any judgment of foreclosure or supplemental judgment or other item for which Mortgagee is authorized to make a Protective Advance; and (b) the deficiency in case of a sale and deficiency.

<u>Assignment of Rents and Leases</u>

17. To further assure the repayment of the indebtedness secured hereby, Mortgagor hereby sells, assigns and transfers unto 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 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 avails thereunder, to Mortgagee and not merely the passing of a security interest. Mortgagor 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 <u>Section 19</u> 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 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 the Premises, with the same rights and powers and subject to the same immunities, exoneration of liability and rights of recourse and indemnity as Mortgagee would have upon taking possession pursuant to the provisions of <u>Section 19</u> hereof.

Mortgagor represents and agrees that no rent has been or will be paid by any person in possession of any portion of the Premises for more than one installment in advance and that, except as authorized in the Loan Agreement, the payment of none of the rents to accrue for any portion of the said Premises will be waived, released, reduced, discounted or otherwise discharged or compromised by Mortgagor, except as may be approved in writing by Mortgagee. As between Mortgagor and Mortgagee, Mortgagor waives any rights of set off against any person in possession of any portion of the Premises. Mortgagor agrees that it will not assign any of the rents or profits of the Premises, except to a purchaser or grantee of the Premises.

Nothing herein contained shall be construed as constituting Mortgagee a mortgagee in possession in the absence of the taking of actual possession of the Premises by Mortgagee pursuant to Section 19 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 Mortgagor.

Mortgagor 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 reasonably require.

Although it is the intention of the parties that the assignment contained in this Section 17 shall be a present absolute assignment, it is expressly understood and agreed, anything herein contained to the contrary notwithstanding, that Mortgagee shall not exercise any of the rights or powers conferred upon it by this Section until an Event of Default shall have occurred under this Mortgage, the Note, the Loan Agreement, the Loan Documents or any other instrument evidencing or securing the indebtedness secured hereby or delivered pursuant to the Loan Agreement.

Observance of Lease Assignment

18. Mortgagor expressly covenants and agrees that if Mortgagor, as lessor, shall fail to perform and fulfill any material term, covenant, condition or provision in the lease or leases assigned and transferred unto Mortgagee under Section 17 herein, or any of them, on its part to be performed or fulfilled, at the times and in the manner in said lease or leases provided, then and in any such event, such breach or default shall constitute a default hereunder and at the option of Mortgagee, and after fifteen (15) days notice to 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. Notwithstanding any provision in this Mortgage to the contrary, either of the Existing Leases (as such term is defined in the Loan Agreement) may be terminated in accordance with the terms of such leases.

Mortgagee's Right of Possession in Case of Default

19. In any case in which under the provisions of this Mortgage 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 judgment thereunder, and at all times until confirmation of sale, Mortgagor shall forthwith, upon demand of Mortgagee, surrender to Mortgagee and Mortgagee shall be entitled to take and upon Mortgagee's request to the court to be placed in actual possession of, Mortgagee shall be placed in possession of the Premises or any part thereof, personally, or by its agent or attorneys as provided in Subsections (b)(2) and (c) of Section 1701 of the Act. In such event Mortgagee in its discretion may, with or without force and with or without process of law, enter upon and take and maintain or may apply to the court in which a foreclosure is pending to be placed in possession of all or any part of said Premises, together with all documents, books, records, papers and accounts of Mortgagor or then owner of the Premises relating thereto, and may exclude Mortgagor, its agents or servants, wholly therefrom and may, as attorney in fact or agent of 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, and with full power: (a) to cancel or terminate any lease or sublease for any cause or on any ground which would entitle Mortgagor to cancel the same; (b) to elect to disaffirm any lease or sublease which is then subordinate to the lien hereof; (c) 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 lessees 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 deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or

other such provisions to be contained therein, shall be binding upon Mortgagor and all persons whose 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; (d) to enter into any management, leasing or brokerage agreements covering the Premises; (e) to make all necessary or proper repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements to the Premises as to it may seem judicious; (f) to insure and reinsure the same and all risks incidental to Mortgagee's possession, operation and management thereof; and (g) to receive all of such avails, rents, issues and profits; hereby granting full power and authority to exercise each and every of the rights, privileges and powers herein granted at any and all times hereafter, without notice to Mortgagor. Without limiting the generality of the foregoing provisions of this Section, Mortgagee shall also have all power, authority and duties as provided in Section 15-1703 of the Act.

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. Mortgagor shall and does hereby agree to indemnify and hold Mortgagee harmless of and from any and all liability, loss or damage which it may or might incur by reason of its performance of any action authorized under this Section 19 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 of Mortgagor; provided that the foregoing shall not apply to any liability, claim, damage or expense to the extent that such liability, claim, damage or expense (i) arises from the breach by Mortgagee of any of its obligations hereunder, or (ii) arises from the gross negligence or willful misconduct of Mortgagee, or (iii) arises from the violation by Mortgagee of any law, order, rule, regulation, judgment or decree of any governmental authority which is applicable to Mortgagee. Should Mortgagee incur any such liability, loss or damage, by its performance or nonperformance of actions authorized by this Section, or in the defense of any claims or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees, together with interest on any such amount at the Default Rate (as that term is hereinafter defined) shall be secured hereby, and Mortgagor shall reimburse Mortgagee therefor immediately upon demand.

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Application of Income Received by Mortgagee

20. Mortgagee, in the exercise of the rights and powers hereinabove conferred upon it by Section 17 and Section 19 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 Mortgagee may determine:

(a) to the payment of the operating expenses of the Premises, including cost of management and leasing thereof (which shall include reasonable compensation to 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 Protective Advances;

(c) to the payment of all maintenance, 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 rentable; and

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

Mortgagee's Right of Inspection

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

Condemnation

22. Mortgagor hereby assigns, transfers and sets over unto Mortgagee its entire interest in the proceeds (the "Condemnation Proceeds") of any award or any claim for damages for any of the Premises taken or damaged under the power of eminent domain or by condemnation or any transaction in lieu of condemnation ("Condemnation"). In all cases Mortgagee shall have the right, at its option, to apply the Condemnation Proceeds upon or in reduction of the indebtedness secured hereby, whether due or not. Any Condemnation Proceeds remaining after application to the indebtedness of Mortgagor and/or Beneficiary under the Note, the Loan Agreement and the other Loan Documents shall be paid by Mortgagee to Mortgagor or the party then entitled thereto.

Release

23. If Mortgagor shall fully pay all principal and interest on the Note, and all other indebtedness secured hereby and comply with all of the other terms and provisions hereof to be performed and complied with by Mortgagor, then this Mortgage shall be null and void. Mortgagee shall release this Mortgage and the lien thereof by proper instrument upon payment and discharge of all indebtedness secured hereby and payment of any filing fee in connection with such release.

Giving of Notice

24. Any notice required or permitted to be given under this Mortgage shall be deemed given (a) when personally delivered, (b) one (1) business day after deposit with Federal Express or other courier for overnight delivery, charges prepaid, or (c) after telephonic confirmation given by the party sending the notice to the party receiving notice that the notice has been transmitted by telecopy, or (d) two (2) Business Days (as such term is defined in the Loan Agreement) after the day which it is deposited in United States Registered or Certified Mail, postage prepaid, return receipt requested, in each case addressed as follows:

If to Mortgagee:

The First National Bank of Chicago
One First National Plaza, Suite 0316
Chicago, Illinois 60670
Attention: Leah Taylor
Telephone No.: 312/732-5358
Telecopy No.: 312/732-8587

with a copy to:

Sonnenschein Nath & Rosenthal
8000 Sears Tower
Chicago, Illinois 60606
Attention: Patrick G. Moran, Esq.
Telephone No.: 312/876-8132
Telecopy No.: 312/876-7934

If to Mortgagor:

American National Bank and
Trust Company of Chicago
Land Trust Department
Trust No. 108920-08
33 North LaSalle Street
Chicago, Illinois 60690
Telephone No.: 312/661-6949
Telecopy No.: 312/661-5373

with a copy to:

Rush Walton Limited Partnership
c/o JMB Realty Corporation
900 North Michigan Avenue
Chicago, Illinois 60611-1585
Attention: Steven E. Plonsker
Telephone No.: 312/915-2852
Telecopy No.: 312/915-2310

and to:

Katten Muchin & Zavis
525 West Monroe Street
Suite 1800
Chicago, Illinois 60606
Attention: Nina S. Matis, Esq.
Telephone No.: 312/902-5560
Telecopy No.: 312/902-1061

or at such other address as the party to be served with notice may have furnished in writing to the party seeking or desiring to serve notice as a place for the service of notice. Notices given in any other fashion shall be deemed effective only upon receipt.

Remedies Not Exclusive

25. No action for the enforcement of the lien or 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. Mortgagee shall be entitled to enforce payment and performance of any indebtedness or obligations secured hereby and to exercise all rights and powers under this Mortgage or other agreement or any laws now or hereafter in force, notwithstanding some or all of the said indebtedness and obligations secured hereby may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment, security agreement, letter of credit 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 Mortgagee's right to realize upon or enforce any other security now or hereafter held by Mortgagee, it being agreed that Mortgagee shall be entitled to enforce this Mortgage and any other remedy herein or by law provided or permitted, but each shall be cumulative and shall 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 Mortgagee 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 Mortgagee and Mortgagee may pursue inconsistent remedies. No waiver of any default of the Mortgagor hereunder shall be implied from any omission by the Mortgagee or Holders to take any action on account of such default if such default persists or be repeated, and no express waiver shall affect any 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 penalty or Default Rate from the date of delinquency, together with any required late charge, shall constitute a waiver of the right of Mortgagee or Holders at any time thereafter to demand and collect payment of interest at such Default Rate or of late charges, if any.

Waiver of Statutory Rights

26. To the extent permitted by law, Mortgagor hereby agrees that it shall not and will not apply for or avail itself of any appraisement, 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 as an entirety. Mortgagor acknowledges that the Premises do not constitute agricultural real estate, as said term is defined in Section 15-1201 of the Act or residential real estate as defined in Section 15-1219 of the Act. Mortgagor hereby waives any and all rights of redemption from sale under any judgment of foreclosure of this Mortgage on behalf of Mortgagor and on behalf of each and every person acquiring any interest in or title to the Premises of any nature whatsoever, subsequent to the date of this Mortgage. The foregoing waiver of right of redemption is made pursuant to the provisions of Section 15-1601(b) of the Act.

Estoppel Affidavits

27. Mortgagor, within five (5) Business Days (as such term is defined in the Note) after written request from Mortgagee, shall furnish a written statement, duly acknowledged, setting forth the unpaid principal of, and interest on, the indebtedness secured hereby and whether or not any offsets or defense exists against such indebtedness, and covering such other matters as Mortgagee may reasonably require.

"Default Rate"

28. "Default Rate" as used herein shall mean interest at the Default Rate defined in the Note.

Binding on Successors and Assigns

29. 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 Holders from time to time and of the successors and assigns of the Mortgagee.

Definitions of "Mortgagor," "Mortgagee" and "Affiliated Parties"

30. The word "Mortgagor" when used herein shall include: (a) the original Mortgagor named in the preambles hereof; (b) said original Mortgagor's successors and assigns; and (c) all owners from time to time of the Premises. The words "Affiliated Parties" when used herein shall mean any and all of: (a) guarantor of any of the obligations of Mortgagor under the Note, this Mortgage, the Loan Agreement, or the Loan Documents; (b) if Mortgagor is a trustee, beneficiaries of the trust; (c) if any Affiliated Party is a general or limited partnership, the general partners thereof, and (d) if any Affiliated Party is a joint venture, its joint venture partners. The words "Holders" and "Mortgagee" when used herein shall include all successors and assigns of the original Holders and Mortgagee identified in the preambles hereof.

Maintenance of Mortgagor's and Affiliated Parties' Interests

31. In determining whether or not to make the loan secured hereby, Mortgagee examined the creditworthiness of Mortgagor's beneficiary, found it acceptable and relied and continues to rely upon same as the means of repayment of the loan. Mortgagee also evaluated the background and experience of Mortgagor's beneficiary in owning and operating property such as the Premises, found it acceptable and relied and continues to rely upon same as the means of maintaining the value of the Premises which is Mortgagee's security for the loan. Mortgagor's beneficiary is an entity controlled by individuals

or entities well-experienced in borrowing money and owning and operating property such as the Premises, was ably represented by a licensed attorney at law in the negotiation and documentation of the loan secured hereby and bargained at arm's length and without duress of any kind for all of the terms and conditions of the loan, including this provision. Mortgagor recognizes that Mortgagee is entitled to keep its loan portfolio at current interest rates by either making new loans at such rates or collecting assumption fees and/or increasing the interest rate on a loan, the security for which is purchased by a party other than the original Mortgagor. Mortgagor further recognizes that any secondary or junior financing placed upon the Premises (a) may divert funds which would otherwise be used to pay the Note secured hereby; (b) could result in acceleration and foreclosure by any such junior encumbrancer which would force Mortgagee to take measures and incur expenses to protect its security; (c) would detract from the value of the Premises should Mortgagee come into possession thereof with the intention of selling same; and (d) impair Mortgagee's right to accept a deed in lieu of foreclosure, as a foreclosure by Mortgagee would be necessary to clear the title to the Premises.

In accordance with the foregoing and for the purposes of (i) protecting Mortgagee's security, both of repayment by Mortgagor and of value of the Premises; (ii) giving Mortgagee the full benefit of its bargain and contract with Mortgagor; (iii) allowing Mortgagee to raise the interest rate and/or collect assumption fees; and (iv) keeping the Premises free of subordinate financing liens, Mortgagor agrees that if this paragraph be deemed a restraint on alienation, that it is a reasonable one and that any sale, conveyance, assignment, further encumbrance or other transfer of title to the Premises or any interest therein (whether voluntary or by operation of law) without the Mortgagee's prior written consent shall be an Event of Default hereunder. For the purpose of, and without limiting the generality of, the preceding sentence, it shall be deemed to be an unpermitted transfer of title to the Premises and therefore an Event of Default hereunder, giving Mortgagee the right at its election under Section 13 hereof, to declare immediately due and payable the entire indebtedness secured hereby, if without Mortgagee's prior written consent (unless otherwise provided for in the Loan Agreement):

(a) Mortgagor shall transfer, convey, alien, pledge, hypothecate or mortgage the Premises or any part thereof or if Mortgagor shall contract for or commit to any of the foregoing; or

(b) Guarantor, its Affiliates (as such term is defined in the Loan Agreement), employees or shareholders

shall transfer, or suffer or permit any transfer of, any direct or indirect interest in Beneficiary and such transfer causes any of the representations made in Section 5.1 of the Loan Agreement to be untrue in any material respect; or

(c) Beneficiary shall convey, alien, pledge, hypothecate, or mortgage its interest in Mortgagor or if Beneficiary shall contract for or commit to any of the foregoing; or

(d) there shall be any violation of Section 5.12 of the Loan Agreement.

Any consent by the Mortgagee, or any waiver of an Event of Default under this paragraph shall not constitute a consent to, or waiver of any right, remedy or power of the Mortgagee upon a subsequent Event of Default under this paragraph.

Captions

32. 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.

Disbursement of Loan Proceeds

33. Mortgagor covenants and agrees that the proceeds of the loan secured hereby are to be disbursed by Mortgagee to Mortgagor in accordance with the provisions contained in a certain Loan Agreement of even date herewith between Mortgagor and Mortgagee. Said Loan Agreement is referred to herein as the "Loan Agreement," and is incorporated herein by express reference. Pursuant to and subject to the terms of the Loan Agreement, Mortgagee has committed to advance or apply monies to or on behalf of Mortgagor, and the parties hereby acknowledge and intend that all such advances, whenever hereafter made, shall be a lien from the time this Mortgage is recorded, as provided in Section 15-1302(b)(1) of the Act. All advances and indebtedness arising and accruing under the Loan Agreement from time to time, whether or not the resulting indebtedness secured hereby may exceed the face amount of the Note, shall be secured hereby to the same extent as though said Loan Agreement were fully incorporated in this Mortgage, and the occurrence of any Event of Default under said Loan Agreement shall constitute a default under this Mortgage entitling Mortgagee to all of the rights and remedies conferred upon Mortgagee by the terms of this Mortgage. In the event of any conflict or inconsistency between the terms of this Mortgage and the Loan Agreement, the terms and provisions of the Loan Agreement shall in each instance govern and control.

It is understood and agreed, however, that with respect to subsequent purchasers and mortgagees without actual notice, none of the advances or indebtedness arising or accruing under the Loan Agreement, shall result in an increase of the indebtedness secured and to be secured hereby over the face amount of the Note beyond one hundred percent (100%) of such face amount. In determining the amount of such increase there shall be excluded from any computation, all indebtedness which would constitute secured indebtedness under the terms of this Mortgage had this Section 33 been omitted herefrom.

Security Agreement and Financing Statements

34. Mortgagor and Mortgagee agree: (i) that this Mortgage shall constitute a Security Agreement within the meaning of the Uniform Commercial Code (the "Code") of the state in which the Premises are located with respect to all sums on deposit with the Mortgagee pursuant to Sections 3 and 4 hereof ("Deposits") and with respect to any property included in the definition herein of the word "Premises," which property may not be deemed to form a part of the real estate described in Exhibit A or may not constitute a "fixture" (within the meaning of Section 9-313 of the Code), and all replacements of such property, substitutions for such property, additions to such property, and the proceeds thereof (said property, replacements, substitutions, additions and the proceeds thereof being sometimes herein collectively referred to as the "Collateral"); and (ii) that a security interest in and to the Collateral and the Deposits is hereby granted to the Mortgagee; and (iii) that the Deposits and all of Mortgagor's right, title and interest therein are hereby assigned to the Mortgagee; all to secure payment of the indebtedness and to secure performance by the Mortgagor of the terms, covenants and provisions hereof.

If an Event of Default occurs under this Mortgage, Mortgagee, pursuant to the appropriate provisions of the Code, shall have an option to proceed with respect to both the real property and Collateral in accordance with its rights, powers and remedies with respect to the real property, in which event the default provisions of the Code shall not apply. The parties agree that if the Mortgagee shall elect to proceed with respect to the Collateral separately from the real property, Mortgagee shall have all remedies available to a secured party under the Code and ten (10) days' notice of the sale of the Collateral shall be reasonable notice. The reasonable expenses of retaking, holding, preparing for sale, selling and the like incurred by Mortgagee shall include, but not be limited to, attorneys' fees and legal expenses incurred by Mortgagee. Mortgagor agrees that, without the written consent of Mortgagee, Mortgagor will not remove or permit to be removed from the Premises any of the Collateral except that so long as

the Mortgagor is not in default hereunder, Mortgagor shall be permitted to sell or otherwise dispose of the Collateral when obsolete, worn out, inadequate, unserviceable or unnecessary for use in the operation of the Premises, but only upon replacing the same or substituting for the same other Collateral at least equal in value and utility to the initial value and utility of that disposed of and in such a manner that said replacement or substituted Collateral shall be subject to the security interest created hereby and that the security interest of Mortgagee shall be perfected and first in priority, it being expressly understood and agreed that all replacements, substitutions and additions to the Collateral shall be and become immediately subject to the security interest of this Mortgage and covered hereby. Mortgagor covenants and represents that all Collateral now is, and that all replacements thereof, substitutions therefor or additions thereto unless the Mortgagee otherwise consents, will be free and clear of liens, encumbrances, title retention devices and security interests of others.

Mortgagor and Mortgagee agree, to the extent permitted by law, that: (i) all of the goods described within the definition of the word "Premises" herein are or are to become fixtures on the land described in Exhibit A; (ii) this instrument, upon recording or registration in the real estate records of the proper office, shall constitute a "fixture filing" within the meaning of Sections 9-313 and 9-402 of the Code; and (iii) Mortgagor is the record owner of the land described in Exhibit A. The addresses of Mortgagor and Mortgagee are set forth in Section 24 hereof.

Mortgagor, upon request by Mortgagee from time to time, shall execute, acknowledge and deliver to Mortgagee, or cause any Affiliated Party to so execute, acknowledge and deliver to Mortgagee, a separate Security Agreement, Financing Statement or other similar security instruments, in form satisfactory to Mortgagee, covering all property of any kind whatsoever owned by Mortgagor or such Affiliated Party, as the case may be, which in the sole opinion of Mortgagee is essential to the operation of the Premises and which constitutes goods within the meaning of the Code or concerning which there may be any doubt whether the title to same has been conveyed by or security interest perfected by this Mortgage under the laws of the state in which the Premises are located, and 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 request in order to perfect, preserve, maintain, continue and extend the security interest under and the priority of this Mortgage and such security instrument. Mortgagor 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. Mortgagor shall from time to time, on request of Mortgagee, deliver to Mortgagee an inventory of the Collateral in reasonable detail.

Partial Invalidity; Maximum Allowable Rate of Interest

35. Mortgagor and Mortgagee intend and believe that each provision in this Mortgage and the Note comports with all applicable local, state and federal laws and judicial decisions. However, if any provision or provisions, or if any portion of any provision or provisions, in this Mortgage or the Note is found by a court of law to be in violation of any applicable local, state or federal ordinance, statute, law, administrative or judicial decision, or public policy, and if such court should declare such portion, provision or provisions of this Mortgage and the Note to be illegal, invalid, unlawful, void or unenforceable as written, then it is the intent both of Mortgagor 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 and the Note shall be construed as if such illegal, invalid, unlawful, void or unenforceable portion, provision or provisions were not contained therein, and that the rights, obligations and interest of Mortgagor and Mortgagee under the remainder of this Mortgage and the Note shall continue in full force and effect. All agreements herein and in the Note are expressly limited so that in no contingency or event whatsoever, whether by reason of advancement of the proceeds hereof, acceleration of maturity of the unpaid principal balance of the Note, or otherwise, shall the amount paid or agreed to be paid to the Holders for the use, forbearance or detention of the money to be advanced hereunder exceed the highest lawful rate permissible under applicable usury laws. If, from any circumstances whatsoever, fulfillment of any provision hereof or of the Note or any other agreement referred to herein, at the time performance of such provision shall be due, shall involve transcending the limit of validity prescribed by law which a court of competent jurisdiction may deem applicable hereto, then, ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity and if from any circumstance the Holders shall ever receive as interest an amount which would exceed the highest lawful rate, such amount which would be excessive interest shall be applied to the reduction of the unpaid principal balance due under the Note and not to the payment of interest.

Mortgagee's Lien for Service Charge and Expenses

36. 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 loan commissions, service charges, liquidated damages, expenses and advances due to or incurred by Mortgagee in connection with the loan to be secured hereby; provided, however, that in no event shall the total amount of loan proceeds disbursed plus such additional amounts exceed two hundred percent (200%) of the face amount of the Note.

Applicable Law

37. This Mortgage, the Note and all other instruments evidencing and securing the loan secured hereby shall be construed, interpreted and governed by the laws of the State of Illinois.

Trustee Exculpation

38. This Mortgage is executed by American National Bank and Trust Company of Chicago, not personally but solely as Trustee as aforesaid, in the exercise of the power and authority conferred upon and vested in it as such Trustee (and American National Bank and Trust Company of Chicago hereby represents and warrants that it possesses full power and authority to execute this instrument). All the terms, provisions, stipulations, covenants and conditions to be performed hereunder (whether or not the same are expressed in terms of covenants, promises or agreements) are undertaken by it solely as Trustee, as aforesaid, and not individually, and no personal liability shall be asserted to be enforceable against Trustee by reason of any of the terms, provisions, stipulations, covenants and conditions contained herein.

The trust agreement under which Mortgagor is acting as trustee constitutes a "land trust" as said term is defined in Section 15-1205 of the Act.

IN WITNESS WHEREOF, AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, not personally but as Trustee as aforesaid, has caused these presents to be signed by its Trust Officer, and its corporate seal to be hereunto affixed and attested by its Asst Secretary the day and year first above written.

AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, not personally, but as Trustee as aforesaid

By: _____
Its Trust Officer

ATTEST:

_____
Its Asst Secretary

This instrument was prepared by and after recording return to:

Patrick G. Moran, Esq.
Sonnenschein Nath & Rosenthal
8000 Sears Tower
Chicago, Illinois 60606

3981539

EXHIBIT A

LEGAL DESCRIPTION

LOTS 1, 2 AND 3 IN SCHULZE AND MUHLENKAMP'S SUBDIVISION OF THE SOUTH 1/2 OF BLOCK 8 IN CANAL TRUSTEES' SUBDVISION OF THE SOUTH FRACTIONAL 1/4 OF SECTION 3, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

WITH THE FOLLOWING PORTION OF THE ABOVE-REFERENCED PROPERTY BEING REGISTERED UNDER AN ACT CONCERNING LAND TITLES, KNOWN AS THE TORRENS ACT:

THAT PART OF THE NORTH 1/2 OF LOT 1 DESCRIBED AS FOLLOWS: BEGINNING AT A POINT IN THE WESTERLY LINE OF LOT 1 57.04 FEET (MEASURED ALONG SAID WESTERLY LINE) NORTH OF THE NORTH EAST CORNER OF RUSH STREET AND WALTON PLACE; THENCE RUNNING EAST 100 FEET; THENCE NORTH 25 1/2 FEET; THENCE WEST ON A LINE PARALLEL TO WALTON PLACE TO RUSH STREET TO THE POINT OF BEGINNING, IN SCHULZE AND MUHLENKAMP'S SUBDIVISION OF THE SOUTH 1/2 OF BLOCK 8 IN THE SUBDIVISION BY THE COMMISSIONERS OF THE ILLINOIS AND MICHIGAN CANAL OF THE SOUTH FRACTIONAL 1/4 OF SECTION 3, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PROPERTY ADDRESS: 937-9 North Rush Street
44-48 East Walton
Chicago, Illinois

PINS: 17-03-207-030
17-03-207-031
17-03-207-032
17-03-207-033
17-03-207-034

3981539

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

L. M. SOVIENSKI

I, _____, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that P. JOHANSEN of American National Bank and Trust Company of Chicago and Gregory S. Kasprzyk of said bank who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such [redacted] 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 bank, as Trustee as aforesaid, for the uses and purposes therein set forth; and the said _____ ASSISTANT SECRETARY _____ then and there acknowledged that he as custodian of the corporate seal of said bank, did affix the corporate seal of said bank to said instrument as his, her own free and voluntary act and as the free and voluntary act of said bank, as Trustee as aforesaid, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 17TH day of July, 1991.

L. M. Sovienski
Notary Public

My Commission Expires: _____

"OFFICIAL SEAL"
L. M. Sovienski
Notary Public, State of Illinois
My Commission Expires 07/17/92

3981539

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1436158 MA

NID

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1991 JUL 22 AM 11:28

CAROL MOSELEY BRAUN
REGISTRAR OF TITLES

Subm
Addr
Prop
Dec 3981539

3981539

D
Ad
N

C.T.U/SUKALO

CPT

73-09-317.