

UNOFFICIAL COPY

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2000-10-03 10:52:22  
Cook County Recorder 83.00

Street Address: 3733 Ventura Drive  
City of: Arlington Heights  
County of: Cook  
State of: Illinois  
Section: \_\_\_\_\_  
Block: \_\_\_\_\_  
Lot: \_\_\_\_\_



00773640

This Instrument Prepared by and  
After Recording Should be Returned to:

Michael Sawyer Smith  
Foley & Lardner  
Suite 3300  
330 North Wabash Avenue  
Chicago, Illinois 60611

(Space above this line for Recorder's use)

### MORTGAGE AND SECURITY AGREEMENT

**THIS MORTGAGE AND SECURITY AGREEMENT**, (this "Mortgage") made as of this 28th day of September, 2000 by Chicago Title Land Trust Company, as trustee of Trust Number 54617 under Trust Agreement dated December 30, 1969 (the "Trust") and Ventura Partnership, an Illinois general partnership ("Beneficiary"), having an address c/o Delta Tech Mold, Inc., 3733 Ventura Drive, Arlington Heights, Illinois 60004 (collectively, Beneficiary and the Trust are herein referred to as the "Mortgagor"), and, American National Bank and Trust Company of Chicago, having an address at 513 Central Avenue, Highland Park, Illinois 60035, (the "Mortgagee").

#### WITNESSETH:

**WHEREAS**, Mortgagor desires to borrow certain sums from Mortgagee and Mortgagee desires to lend certain sums to Mortgagor provided Mortgagor provides Mortgagee certain security therefore;

**NOW THEREFORE**, in consideration of TEN AND NO/100 DOLLARS (\$10.00) and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged and to secure: (a) the payment of an indebtedness in the principal sum of One Million Three

**BOX 333-CTI**

Hundred Twenty Thousand Five Hundred Ninety Five and 08/100 Dollars (\$1,320,595.08), in lawful money of the United States of America, with interest thereon computed at the rate of 10.45%, in accordance with the terms of a certain Loan Agreement and Promissory Note bearing even date herewith (the "Promissory Note") (terms not otherwise defined herein shall have the meanings prescribed in the Promissory Note) together with (b) any other sums now or hereafter due and owing between Mortgagor and Mortgagee by reason of any advance of money made by Mortgagee to Mortgagor, whether pursuant to the Promissory Note, this Mortgage, the Guaranty or any Collateral Document or other document either evidencing or securing indebtedness of Mortgagor to Mortgagee under any other financing transaction entered into between Mortgagor and Mortgagee (the indebtedness provided for in (a) and (b) above being the "Indebtedness"), Mortgagor hereby mortgages, pledges, conveys, sets over, assigns, sells, bargains, remises, and grants to Mortgagee the real estate commonly known as 3733 Ventura Drive, situate, lying and being in the County of Cook, City of Arlington Heights, and State of Illinois, and more particularly described in **Exhibit A** attached hereto (the "Land");

A. **TOGETHER WITH** all of the right, title and interest of Mortgagor in and to all and singular the tenements, hereditaments, rights of way, easements, privileges and appurtenances thereto belonging or in anywise appertaining to the Land.

B. **TOGETHER WITH** all of the buildings, structures and improvements of every nature now located on the Land or which may hereafter be placed thereon, and all chattels, goods, furniture, equipment, machinery, apparatus, fixtures, and articles of tangible personal property of every kind and nature whatsoever of Mortgagor now or hereafter located in or upon the Land, or any building or structure located or to be located thereon, and used or usable in connection with the operation of the Land and proceeds thereof and all substitutions and replacements therefor to the extent owned by Mortgagor (the "Improvements"). All such property which is part and parcel of the Land and Improvements and appropriated to the use thereof, and, whether affixed or annexed thereto or not to the extent owned by Mortgagor, shall for the purpose of this Mortgage be deemed conclusively to be mortgaged hereby and Mortgagor agrees to execute and deliver, from time to time, such further instruments (including security agreements or financing statements) as may be requested by Mortgagee to confirm the lien of this Mortgage on any such property.

C. **TOGETHER WITH:** (i) all the estate, right, title and interest of Mortgagor of, in and to all judgments, insurance proceeds, award of damages and settlements hereafter made resulting from condemnation proceedings or the taking of the Land or Improvements or any part thereof under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) of the Land or Improvements or any part thereof, or to any rights appurtenant thereto, and all proceeds of any sales or other dispositions of Land or Improvements or any part thereof; and (ii) all contract rights, general intangibles, actions and rights in action, including without limitation all rights to insurance proceeds and unearned premiums arising from or relating to Land and Improvements; and (iii) all proceeds, products, replacements, additions, substitutions, renewals and accessions of and to the Land and Improvements.

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D. **TOGETHER WITH** all the estate, right, title, claim or demand whatsoever of Mortgagor, in and to any present or future management agreements with respect to the premises ("Management Agreement") and all rents, income, profits and other benefits to which Mortgagor may now or hereafter be entitled from the property described in Paragraphs A, B, and C above and all leases now or hereafter affecting the property described in Paragraphs A, B and C above (such granting constituting an absolute and present assignment of such property subject to conditional permission of Mortgagor to collect such rents as provided in Paragraph No. 24 hereof). The Land and Improvements and all such property described in Paragraphs A, B, C and D above is hereinafter referred to as the "Mortgaged Premises."

MORTGAGOR hereby represents and warrants to, and covenants and agrees with Mortgagee as follows:

1. Representations. (a) Mortgagor is lawfully seized and is the owner of the Mortgaged Premises; the Mortgaged Premises are free from any liens, claims, restrictions or encumbrances except for those exceptions shown in the title insurance policy insuring the lien of this Mortgage (the "Permitted Encumbrances"); (b) to the best of Mortgagor's knowledge the Land and Improvements and use thereof presently comply with and will continue to comply with all applicable restrictive covenants, applicable zoning and subdivision ordinances and building codes, all applicable health and environmental laws and regulations and all other applicable laws, rules and regulations, including, without limitation, the Americans with Disabilities Act of 1990; (c) if Mortgagor receives notice from any federal, state, municipal or other governmental body that it is not in compliance with any such covenant, ordinance, code, law or regulation, Mortgagor shall promptly provide Mortgagee with a copy of such notice; (d) Mortgagor is now able to meet its debts as they mature, the fair market value of its assets exceeds its liabilities and no bankruptcy or insolvency proceedings are pending or contemplated by or, to Mortgagor's knowledge, against Mortgagor; (e) all reports, statements and other data furnished by Mortgagor to Mortgagee in connection with the loan are to the best of Mortgagor's knowledge true, correct and complete in all material respects and do not omit to state any fact or circumstance necessary to make the statements contained therein not misleading; (f) this Mortgage and any other instruments securing the Indebtedness or otherwise executed in connection therewith are valid and binding obligations enforceable in accordance with their respective terms and the execution and delivery thereof do not contravene any contract or Mortgage to which Mortgagor is a party or by which Mortgagor or any of its respective properties may be bound and do not contravene any law, order, decree, rule or regulation to which Mortgagor is subject; (g) to the knowledge of Mortgagor, there are no actions, suits, or proceedings pending or threatened against or affecting Mortgagor or the Mortgaged Premises; (h) all costs arising from construction of any improvements on the Mortgaged Premises owned by Mortgagor and the purchase of all

equipment located on the Mortgaged Premises have been paid; (i) electric, gas, sewer, water facilities and any other necessary utilities are, and at all times hereafter shall be, available in sufficient capacity to service the Mortgaged Premises satisfactorily and any easements necessary to the furnishing of such utility service by Mortgagor have been obtained and duly recorded; and (j) Mortgagor is not in default under the terms of any instrument evidencing or securing any indebtedness of Mortgagor, and there has occurred no event which would, if uncured or uncorrected, constitute a default under any such instrument with the giving of notice, passage of time or both.

2. Execution and Delivery. Mortgagor warrants that it has good right and power to convey and mortgage the Mortgaged Premises, and to execute and deliver this Mortgage and any other instruments securing the Indebtedness or otherwise executed in connection therewith, and does hereby warrant and will forever defend the Mortgaged Premises against the claims of all persons whomsoever.

3. Payment of Sums. Mortgagor shall pay all Indebtedness when due in accordance with the terms of the Promissory Note, the Mortgage and the Collateral Documents.

4. Taxes and Assessments. Mortgagor shall pay, when due, all taxes, assessments, water rates and governmental charges of every type or nature levied or assessed against the Mortgaged Premises or upon Mortgagor's interest therein, and any claim, lien or encumbrance against the Mortgaged Premises which may be or become due prior to this Mortgage, and shall produce all receipts or other satisfactory evidence of such payments. If any of such items shall not be paid, Mortgagee shall have the right to pay the same and add the amount so paid to the principal sums secured hereby with interest thereon at the Default Rate provided for in the Promissory Note until paid. Notwithstanding the foregoing, Mortgagor may in good faith, by appropriate proceedings, contest the validity, applicability, or amount of any asserted tax or assessment, and pending such contest Mortgagor shall not be deemed in default hereunder if prior to delinquency of the asserted tax or assessment Mortgagor establishes an escrow acceptable to Mortgagee adequate to cover the payment of such tax or assessment with interest, cost and penalties and a reasonable additional sum to cover possible costs, interest and penalties (which escrow shall be returned to Mortgagor upon payment of all such taxes, assessments, interest and penalties), and if Mortgagor promptly causes to be paid any amount adjudged by a court of competent jurisdiction to be due, with all costs, penalties and interest thereon, promptly after such judgment becomes final; provided, however, that in any event each such contest shall be concluded and the tax, assessment, penalties, interest and costs shall be paid prior to the date any writ or order is issued under which the Mortgaged Premises may be sold.

5. Tax and Insurance Escrows. In order to secure Mortgagor's performance of its obligations under paragraph 4 above and paragraph 7 hereof, Mortgagor shall at the option of Mortgagee, following an Event of Default hereunder or Mortgagee's receipt of other evidence that Mortgagor was not paid yearly taxes and

assessments as required hereby, make monthly deposits with Mortgagee, together with and in addition to regular installments of principal and interest due under the Promissory Note of a sum equal to one-twelfth (1/12) of the yearly taxes and assessments which may be levied against the Mortgaged Premises, and one-twelfth (1/12) of the yearly premiums for insurance thereon. The amount of such taxes, assessments and premiums, when unknown, shall reasonably be estimated by Mortgagee. Such deposits shall be used by Mortgagee to pay such taxes, assessments and premiums when due. Any insufficiency in such account to pay such charges when due shall be paid by Mortgagor to Mortgagee on demand. If, by reason of any default by Mortgagor under any provision of this Mortgage, Mortgagee declares all sums secured hereby to be due and payable, Mortgagee may then apply any funds in said account against the entire Indebtedness secured hereby. The enforceability of the covenants relating to taxes, assessments and insurance premiums herein otherwise provided shall not be affected except insofar as those obligations have been met by compliance with this paragraph. Mortgagee may from time to time at its option waive, and after any such waiver from time to time reinstate any or all provisions hereof requiring such deposits by notice to Mortgagor in writing. While any such suspension is in effect, Mortgagor shall pay taxes, assessments and insurance premiums as herein elsewhere provided. All deposits made by Mortgagor under this paragraph shall not be nor be deemed to be trust funds but may be commingled with the general funds of Mortgagee and no interest shall be payable upon any such funds.

6. Taxes on Mortgage. If any law is enacted or adopted after the date of this Mortgage which deducts the Indebtedness from the value of the Mortgaged Premises for the purpose of taxation, or which changes the laws now in force for the taxation of mortgages, security instruments or debts secured thereby or the manner of the operation of any such taxes, or which otherwise imposes a tax, either directly or indirectly, on the Mortgage or the Indebtedness, Mortgagor will pay such tax, with interest and penalties thereon, if any. In the event Mortgagee is advised by counsel chosen by it that the payment of such tax or interest and penalties by Mortgagor would be unlawful or taxable to Mortgagee or unenforceable or provide the basis for a defense of usury, then in any such event, Mortgagee shall have the option, by written notice of not less than ninety (90) days, to declare the Indebtedness immediately due and payable.

7. Insurance. Mortgagor, at its expense, shall obtain and deliver to Mortgagee policies of insurance providing the following:

(a) Policies of insurance evidencing bodily injury, death or property damage liability coverages in amounts not less than \$2,000,000.00 (combined single limit), and an excess/umbrella liability coverage in an amount not less than \$1,000,000.00 shall be in effect with respect to Mortgagor. Such policies must be written on an occurrence basis so as to provide blanket contractual liability, broad form property damage coverage, and coverage for products and completed operations.



(b) "Special Cause of Loss" insurance on the Improvements in an amount not less than the full insurable value on a replacement cost basis of the insured Improvement and personal property related thereto. During any period that construction is occurring on the Mortgaged Premises, such policy shall be written in the so-called "Builder's Risk Completed Value Non-Reporting Form" (or "Reporting Form" if the Improvements are a single family residential development) with no coinsurance requirement and shall contain a provision granting the insured permission to complete.

(c) If applicable, evidence of worker's compensation insurance coverage satisfactory to Mortgagee.

(d) If the Land, or any part thereof, lies within a "special flood hazard area" as designated on maps prepared by the Department of Housing and Urban Development, a National Flood Insurance Association standard flood insurance policy, plus insurance from a private insurance carrier if necessary, for the duration of the Loan in the amount of the full insurable value of the Improvements.

(e) Such other insurance as Mortgagee may require, which may include, without limitation, errors and omissions insurance with respect to the contractors, architects and engineers, earthquake insurance, rent abatement and/or business loss.

All insurance policies shall (i) be issued by an insurance company having a rating of "A" VII or better by A.M. Best Co., in Best's Rating Guide, (ii) name Mortgagee as an additional insured on all liability insurance and as Mortgagee and loss payee on all casualty insurance, (iii) provide that Mortgagee is to receive thirty (30) days' written notice prior to non-renewal or cancellation, (iv) be evidenced by a certificate of insurance to be held by Mortgagee, and (v) be in form and amounts acceptable to Mortgagee.

Notwithstanding the foregoing, Mortgagee shall be obligated to make the proceeds of insurance proceeds available to Mortgagor for restoration of the Mortgaged Premises if: (i) all leases in effect immediately prior to such damage or destruction will remain in full force and effect following such damage and destruction and no Event of Default has occurred hereunder; (ii) there are sufficient proceeds (including additional funds from Mortgagee, if necessary) in Mortgagee's sole opinion, to pay for such restoration; (iii) the Loan is not then in default; (iv) all proceeds are disbursed, at Mortgagor's expense through a construction escrow maintained at a title company of Mortgagee's selection with such title company providing title insurance to Mortgagee insuring Mortgagee against liens arising against the Mortgaged Premises as the results of such restoration.

If at any time Mortgagor fails to provide Mortgagee with evidence of the insurance coverage required by this Mortgage, Mortgagee may purchase such insurance

at Mortgagor's expense to protect Mortgagee's interest in the Mortgaged Premises. This insurance may, but need not, protect Mortgagor's interests. The coverage that Mortgagee purchases may not pay any claim that Mortgagor may make or any claim that is made against Mortgagor in connection with the Mortgaged Premises. Mortgagor may later cancel any insurance purchased by Mortgagee, but only after providing Mortgagee with evidence that Mortgagor has obtained insurance as required by this Mortgage. If Mortgagee purchases insurance for the Mortgaged Premises, Mortgagor will be responsible for the costs of that insurance, including interest at the Default Rate and any other charges that Mortgagee imposes in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to Mortgagor's total outstanding Indebtedness secured hereby. The costs of the insurance may be more than the costs of insurance that Mortgagor may be able to obtain through Mortgagor's own efforts.

8. Condemnation. Mortgagor shall give Mortgagee immediate notice of the actual or threatened commencement of any condemnation or eminent domain proceeding and shall deliver to Mortgagee copies of any and all papers served in connection with such proceedings. All awards heretofore or hereafter made by any public or quasi-public authority to the present and all subsequent owners of the Mortgaged Premises by virtue of an exercise of the right of eminent domain by such authority, including any award for a taking of title, possession or right or access to a public way, or for any change of grade of streets affecting the Mortgaged Premises, are hereby assigned to Mortgagee; and Mortgagee, at its option is hereby authorized, directed and empowered to collect and receive the proceeds of any such awards from the authorities making the same and to give proper receipts and acquittance therefor, and may, at Mortgagee's election, use such proceeds in any one or more of the following ways: (1) apply the same or any part thereof in reduction of the Indebtedness, whether such Indebtedness then be matured or unmatured; (2) use the same or any part to fulfill any of the covenants contained herein as Mortgagee may determine; (3) use the same or any part thereof to replace or restore the Mortgaged Premises to a condition satisfactory to Mortgagee; (4) release the same to Mortgagor. Notwithstanding the foregoing, Mortgagee shall be obligated to make the proceeds of a condemnation award available to Mortgagor for restoration of the Mortgaged Premises if: (i) all leases in effect immediately prior to such condemnation will remain in full force and effect following such condemnation; (ii) there are sufficient proceeds (including additional funds from Mortgagee, if necessary) in Mortgagor's sole opinion, to pay for such restoration; (iii) the Loan is not then in default; (iv) all proceeds are disbursed, at Mortgagor's expense, through a construction escrow maintained at a title insurance company of Mortgagee's selection with such title insurance company providing title insurance to Mortgagee insuring the priority of Mortgagee's lien against liens arising against the Mortgaged Premises as the result of such restoration; and (v) the estimated value of the Mortgaged Premises following such restoration, as determined by an independent MAI appraiser selected by Mortgagor, is at least equal to the value of the Mortgaged Premises, as determined by such appraiser, prior to the taking. Mortgagor hereby covenants and agrees to and with Mortgagee, upon request

by Mortgagee, to make, execute and deliver any and all assignments and other instruments sufficient for the purpose of so assigning all such awards to Mortgagee. Mortgagee shall have the right to intervene and participate in any proceeding for and in connection with any taking referred to in this paragraph, however, that if such intervention shall not be permissible or permitted by the court adjudicating the proceeding, Mortgagor shall, at its expense, consult with Mortgagee, its attorneys and experts and make all reasonable efforts to cooperate with them in any defense of such proceedings. Mortgagor shall not enter into any agreement for the taking of the Mortgaged Premises or any part thereof with any person or persons authorized to acquire the same by condemnation or eminent domain, unless Mortgagee shall have consented thereto in writing which consent shall not be unreasonably delayed, withheld or conditioned.

9. Care of Land and Improvements. Mortgagor (i) shall not remove, demolish or alter the design or structural character of any Improvements now or hereafter erected upon the Land, nor construct any new improvements on the Land, nor remove or permit the removal of any fixtures, equipment or appliances therefrom unless Mortgagee shall first consent thereto in writing; (ii) shall maintain the Land and Improvements in good condition and repair; (iii) shall not commit or suffer waste thereon; (iv) shall comply with all laws, ordinances, regulations, covenants, conditions and restrictions affecting the Mortgaged Premises, and shall not suffer or permit any violation thereof. Notwithstanding the foregoing, the Mortgagor shall have the right, without the prior written consent of Mortgagee, to remove and dispose of, free from the lien hereof, such personal property of Mortgagor as from time to time may become worn or obsolete, provided that either: (1) simultaneously with or prior to such removal any such personal property shall be replaced with other personal property of equal value and free from any title retention or other security agreement or other encumbrance and from any reservation of title, and by such removal and replacement the Mortgagor shall be deemed to have subjected such personal property to the lien hereof, or (2) any net cash proceeds received from such disposition shall be paid over promptly to the Mortgagee to be applied to the last installments due on the Indebtedness, without any charge for prepayment. Mortgagor shall, upon any damage or destruction to all or any part of the Mortgaged Premises through the occurrence of a casualty, condemnation or otherwise, immediately give notice thereof to Mortgagee and promptly at its sole cost and expense restore the Mortgaged Premises to the equivalent of its former condition, regardless of the existence of any insurance proceeds. The Mortgagor shall not initiate, join in or consent to any change in any private restrictive covenant, zoning ordinance, or other public or private restrictions, limiting or defining the uses which may be made of the Mortgaged Premises or any part thereof. Notwithstanding any provision of this Mortgage to the contrary, Mortgagee will (i) notify all occupants and maintenance personnel of the presence of asbestos containing building materials ("ACBM") in the Improvements; (ii) develop and implement an operations and maintenance plan with respect to such ACBM, which will provide that if future remodeling or demolition activities are to be undertaken in an area where ACBM are present, such ACBM will be removed prior to undertaking such remodeling or



demolition activities, in accordance with all applicable laws and regulations. There shall be maintained by Mortgagor at all times during the term of this Mortgage not less than the minimum number of paved, on-site parking spaces so as to at all times comply with the minimum parking requirements of all leases applicable to the Mortgaged Premises and to all zoning requirements applicable thereto.

10. Payments by Mortgagee. Should Mortgagor fail to pay when due any claim, lien or encumbrance which is superior to this Mortgage, or any tax or assessment or insurance premium, or to keep the Mortgaged Premises in repair, or commit or permit waste, or if there be commenced any action or proceeding affecting the Mortgaged Premises or the title thereto, or if Mortgagor defaults in the performance of any of its covenants or agreements hereunder, after notice of Default and right to cure as set forth in the Promissory Note then Mortgagee, at its option, may pay said claim, lien, encumbrance, tax, assessment or premium, with right of subrogation hereunder, may procure such abstracts or other evidence of title as it deems necessary, may make such repairs and take such steps as it deems advisable to prevent or cure such waste and may appear in any such action therein as Mortgagee deems advisable, and may perform such covenants and obligations and Mortgagee may advance such sums of money as it deems necessary for any of said purposes. Such sums advanced, with interest at the Default Rate for the period from the advance by Mortgagee until paid shall immediately be due from Mortgagor to Mortgagee and secured by this Mortgage. Mortgagee shall be the sole judge of the legality, validity and priority of any such claim, lien, encumbrance, tax, assessment and premium, and of the amount necessary to be paid in satisfaction thereof.

11. Security. Mortgagor hereby grants to Mortgagee a security interest in all fixtures, machinery, appliances, equipment, furniture and personal property of every nature whatsoever constituting part of the Mortgaged Premises and owned by Mortgagor.

Mortgagor shall execute any and all such documents, including, without limitation, financing statements pursuant to the Uniform Commercial Code of the State of Illinois, as Mortgagee may reasonably request to preserve and maintain the priority of the lien created hereby on property which may be deemed personal property or fixtures, and shall pay to Mortgagee on demand any expenses incurred by Mortgagee in connection with the preparation, execution and filing of any such documents. Mortgagor hereby authorizes and empowers Mortgagee to execute and file on Mortgagor's behalf all financing statements and refilings and continuations thereof as Mortgagee deems necessary or advisable to create, preserve and protect said lien. When and if Mortgagor and Mortgagee shall respectively become the Debtor and Secured Party in any Uniform Commercial Code financing statement affecting the Mortgaged Premises, this Mortgage shall be deemed a security agreement as defined in said Uniform Commercial Code and the remedies for any violation of the covenants, terms and conditions of the agreement herein contained shall be (i) as prescribed herein, (ii) by general law, or (iii) as to such part of the security which is also reflected in said

financing statement by the specific statutory consequences now or hereafter enacted and specified in the Uniform Commercial Code, all at Mortgagee's sole election.

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

12. Events of Default. The following shall constitute "Events of Default" after giving effect to any applicable notice and cure periods:

(a) the failure by Mortgagor to make due and punctual payment of principal or interest, or of any installment thereof, or any other amounts required to be paid hereunder or under the Promissory Note or any Collateral Document as the same shall become due and payable, whether at maturity or when accelerated pursuant to any power to accelerate contained herein; or

(b) the failure of Mortgagor timely and properly to observe, keep or perform any covenant, agreement, warranty or condition herein required to be observed, kept or performed other than those referred to in subparagraph 12(a) above and/or the other events of default enumerated in this paragraph 12 continuing for a period of fifteen (15) days after written notice thereof is given to Mortgagee by Mortgagee; or

(c) any representation contained herein, made by Mortgagor shall be false or misleading in any material respect; or

(d) Mortgagor, shall:

(i) admit in writing that Mortgagor is unable to pay Mortgagor's debts as they become due or generally fail to pay its debts as they become due; or

(ii) commence a case under the Federal Bankruptcy Code as now or in the future amended, or file any answer or admission asking for such relief; or

(iii) make an assignment for the benefit of creditors; or

(iv) consent to the appointment of a custodian, trustee or receiver for all or a major portion of its property; or

(v) suffer the entry of an order for relief in a case under the Federal Bankruptcy Code against it and the same shall not be discharged within sixty (60) days from the date of entry, or shall not be vacated, denied, set aside, or stayed within sixty (60) days from the date of entry; or

(vi) suffer the entry of a court order under any law appointing a custodian, receiver or trustee for all or a major part of its property or ordering the winding up or liquidation of its affairs, or approving a petition filed against it under the Federal Bankruptcy Code as now or in the future amended, which order, if not consented to, shall not be vacated, denied, set aside, or stayed within thirty (30) days from the date of entry; or

(vii) suffer a writ or warrant of attachment or similar process to be issued by any court against all or any substantial part of its property or any of the Mortgaged Premises and such writ or warrant of attachment or any similar process is not stayed or released within sixty (60) days after the entry or levy thereof or after any stay is vacated or set aside; or

(e) the Mortgaged Premises or any part thereof shall be taken on execution or other process of law in any action against Mortgagor; or

(f) Mortgagor abandons all or a portion of the Mortgaged Premises;  
or

(g) the holder of any lien or security interest on the Mortgaged Premises (without hereby implying the consent of Mortgagee to the existence or creation of any such lien or security interest) institutes foreclosure or other proceedings for the enforcement of its remedies thereunder which proceedings are not vacated, denied, set aside or stayed within sixty (60) days of the date of filing; or

(h) Mortgagor violates or does not comply with any of the provisions of paragraphs 7, 9 or 19; or

(i) the Mortgaged Premises becomes subject to (i) any lien which is superior to the lien of this Mortgage, other than a lien for local real estate taxes and assessments not due and payable, which is not discharged or contested and insured over within 30 days or (ii) any mechanic's, materialmen's or other lien which is or is asserted to be superior to the lien of this Mortgage, and such lien shall remain undischarged (by payment or bond or title indemnity) for thirty (30) days; or

(j) Mortgagor fails to cure or contest promptly any violations of laws or ordinances affecting or which may be interpreted to affect the Mortgaged Premises; or

(k) Mortgagor defaults on any other obligation now or hereafter arising in connection with, or any Event of Default occurring under, the Promissory Note, the Guaranty or any Collateral Documents; or

(l) Mortgagor or Guarantor fails to comply with any other obligation or breaches of any warranty or covenant provided for herein, in the Promissory Note, the Guaranty, in any other Collateral Documents; or

(m) Delta Tech Mold, Inc. defaults on any obligation arising pursuant to any document evidencing or securing indebtedness of Delta Tech Mold, Inc. to Mortgagee.

(n) a default by Mortgagor or any tenant occurs under any lease, license or occupancy agreement relating to the Mortgaged Premises.

13. Remedies. Upon the happening of an Event of Default:

(a) Mortgagor will pay from the date thereof, interest on the unpaid principal at the rate of provided for in the Note following an Event of Default, or at the maximum interest rate which Mortgagor may by law pay, whichever is lower.

(b) Mortgagee shall have the right, at its option, to declare the amount of the Indebtedness including, without limitation, all principal and

interest thereon due and payable hereunder and any prepayment premium, if any, due pursuant to the Promissory Note or the Collateral Documents, to be due and payable immediately without notice and upon such declaration all Indebtedness then outstanding shall forthwith become and be due and payable as fully and to the same effect as if the date of such declaration was the date originally specified for the maturity of the unpaid balance of the Indebtedness.

(c) Mortgagor shall, at any time or times, upon demand of Mortgagee, forthwith surrender to Mortgagee possession of the Mortgaged Premises and Mortgagee shall have the right, without force and with process of law, either by applying for appointment of a receiver, obtaining an assignment of rents or otherwise, immediately to enter upon, take and maintain possession of all or any part of the Mortgaged Premises, together with all records, documents, leases, books, papers and accounts of Mortgagor relating thereto (including without limitation all sets of plans, specifications, building drawings, licenses and permits), and as the attorney-in-fact or agent of Mortgagor (which power, being coupled with an interest is irrevocable) or in its own name, acting under the assignment of rents and subleases herein made, and under the powers herein granted, shall have the right to hold, operate and manage the Mortgaged Premises and to receive and dispose of the income, rents and profits therefrom, and to make and file reports with respect thereto, as provided under this Mortgage.

(d) Mortgagee shall also have the right:

(i) to institute proceedings for the complete foreclosure of this Mortgage under any other applicable provision of law.

(ii) to protect and enforce its right hereunder, either by suit or suits in equity or at law, in any court or courts of competent jurisdiction, whether for specific performance of any covenant or agreement contained herein, or in aid of the execution of any powers herein granted, or for any foreclosure under this Mortgage, or any other sale of the Mortgaged Premises, so far as may be authorized by law, or for the enforcement of such other or additional appropriate legal or equitable remedies as Mortgagee may deem most effective to protect and enforce such rights.

(iii) to foreclose this Mortgage subject to the rights of any tenants of the Mortgaged Premises or may elect which tenants Mortgagee desires to name as party defendants in such foreclosure and the failure to make any such tenants party defendants to any such foreclosure proceedings and to foreclose their rights will not be, nor be asserted by Mortgagor to be, a defense to any proceedings instituted by Mortgagee



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to collect the sums secured hereby or to collect any deficiency remaining unpaid after the foreclosure sale of the Mortgaged Premises.

(e) Mortgagee, as a matter of strict right and without notice to Mortgagor or anyone claiming under it, and without regard to the then value of the Mortgaged Premises, shall have the right to apply to any court having jurisdiction over the Mortgaged Premises to appoint a receiver or receivers of the Mortgaged Premises, and Mortgagor hereby irrevocably consents to such appointment and waives notice of any application therefor. Any such receiver or receivers shall have all the usual powers and duties of receivers in like or similar cases and all the powers and duties of Mortgagee in case of entry as provided in subparagraph (c) of this paragraph 13 and shall continue as such and exercise all such powers until the date of confirmation of sale, unless such receivership is sooner terminated.

14. Application of Proceeds and Sale of Mortgaged Premises. In the case of a sale of the Mortgaged Premises, or any part thereof, resulting from an event of default, the proceeds of such sale shall be applied:

First: To the payment of all costs and expenses of the proceedings for and in connection with the effecting of such sale, including, without limitation, reasonable attorneys' fees and disbursements, and the costs and expenses of any receiver of the Mortgaged Premises;

Second: To the reimbursement of Mortgagee for any amounts it may have expended or incurred to remedy defaults by Mortgagor or otherwise to establish, preserve or enforce its security hereunder, including, without limitation, reasonable attorneys' fees and disbursements;

Third: To the payment of the full amount of the Indebtedness in such order that Mortgagee may elect up to the amount of the Maximum Indebtedness (as hereafter defined); and

Fourth: Upon satisfaction in full of all subordinate liens on the Mortgaged Premises, the balance, if any, shall be paid to Mortgagor.

At any such sale, Mortgagee may itself purchase the whole or any part of the Mortgaged Premises sold, free of the lien of this Mortgage and from any right of redemption on the part of Mortgagor, all such rights being hereby waived and released.

Upon any sale of the Mortgaged Premises or any part thereof or any interest therein pursuant to foreclosure hereunder, the receipt of the officers making the sale under judicial proceedings shall be sufficient discharge to the purchaser for the purchase money, and such purchaser shall not be obliged to see to the application thereof.

The sale of the Mortgaged Premises or any part thereof or any interest therein pursuant to foreclosure hereunder shall forever be a perpetual bar against Mortgagor.

This Mortgage secures a maximum principal indebtedness of Two Million Eight Hundred Thousand and no/100 Dollars (\$2,800,000.00).

15. Recourse to Security. If the Indebtedness is now or hereafter further secured by chattel mortgages, pledges, contracts of guaranty, assignments of leases, security interests or other securities, Mortgagee may, at its option, exhaust one or more of said securities and the security hereunder, either concurrently or independently, and in such order as it may determine.

16. No Waiver by Mortgagee. No failure of Mortgagee to exercise any option herein given to declare the maturity of the debt hereby secured, no forbearance by Mortgagee after the exercise of such option, and no withdrawal or abandonment of foreclosure proceedings by Mortgagee after the exercise of such option shall be taken or construed as a waiver of its right to exercise such option or to declare such maturity by reason of any past, present or future default on the part of Mortgagor; and, in like manner, the procurement of insurance or the payment of taxes or other liens, debts or charges by Mortgagee shall not be taken nor construed as a waiver of its right to declare the maturity of the Indebtedness hereby secured by reason of the failure of Mortgagor to procure such insurance or to pay such taxes, debts, liens or charges.

17. Actions by Mortgagee. Without affecting the liability of any person (other than any person released pursuant thereto), for payment of the Indebtedness and without affecting the lien hereof upon any property not released pursuant hereto, Mortgagee may, at any time and from time to time, without notice:

- (a) release any person or entity liable for payment of the Indebtedness;
- (b) extend the time, or agree to alter the terms of payment of the Indebtedness;
- (c) accept additional security of any kind;
- (d) release any property securing the Indebtedness.

18. Action and Proceedings. Mortgagee has the right to appear in and defend any action or proceeding brought with respect to the Mortgaged Property and to bring any action or proceeding, in the name and on behalf of Mortgagor, which Mortgagee, in its reasonable discretion, decides should be brought to protect its interest in the Mortgaged Premises.

19. Transfer or Encumbrance of Mortgaged Premises. Mortgagor acknowledges that Mortgagee has examined and relied on the creditworthiness of

Mortgagor and experience of Mortgagor in owning and operating properties such as the Mortgaged Premises in agreeing to make the loan secured hereby, and that Mortgagee will continue to rely on Mortgagor's ownership of the Mortgaged Premises as a means of maintaining the value of the Mortgaged Premises as security for repayment of the Indebtedness. Mortgagor acknowledges that Mortgagee has a valid interest in maintaining the value of the Mortgaged Premises so as to ensure that, should Mortgagor default in the repayment of the Indebtedness, Mortgagee can recover the Indebtedness by a sale of the Mortgaged Premises. Mortgagor shall not, without the prior written consent of Mortgagee, further encumber the Mortgaged Premises or any part thereof or permit the further encumbrance of the Mortgaged Premises or any part thereof. Mortgagor shall not, without the prior written consent of Mortgagee, sell, transfer, convey or hypothecate the Mortgaged Premises or any part thereof, or the right to manage or control the operation of the Mortgaged Premises or any part thereof, or permit the Mortgaged Premises or any part thereof to be sold, transferred, conveyed or hypothecated, or pledge the Mortgaged Premises or any part thereof. A sale, transfer, conveyance or hypothecation within the meaning of this paragraph 19 shall be deemed to include (a) an installment sales agreement wherein Mortgagor agrees to sell the Mortgaged Premises or any part thereof for a price to be paid in installments, or (b) an agreement by Mortgagor leasing all or a substantial part of the Mortgaged Premises for a period of greater than ten (10) years including any extension options, or a sale, assignment or other transfer of, or the grant of a security interest in, Mortgagor's right, title and interest in and to any leases or any rents. Mortgagee shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Indebtedness immediately due and payable upon Mortgagor's sale, transfer, conveyance or further encumbrance of the Mortgaged Premises without Mortgagee's consent. This provision shall apply to every sale, transfer, conveyance, hypothecation or further encumbrance of the Mortgaged Premises, regardless of whether voluntary or not, or whether or not Mortgagee has consented to any previous sale, transfer, conveyance, hypothecation or further encumbrance Of the Mortgaged Premises. Mortgagor was represented by an attorney-at-law in the negotiation of this Mortgage, the terms and conditions of which were bargained for at arm's length and without duress of any kind.

20. Inspection. Mortgagee shall have the right to inspect the Mortgaged Premises, including all buildings and structures thereon, at all reasonable times, and Mortgagor covenants to permit Mortgagee, or its agents or employees, access thereto for that purpose.

21. Books and Records.

(a) For so long as no Event of Default has occurred hereunder, Mortgagor shall deliver to Mortgagee within five (5) days of filing all United States income tax returns of Mortgagor together with any subsequent supplements or amendments thereto;

(b) Following an Event of Default hereunder and in addition to the tax returns specified in 21(a) above, Mortgagor shall be entitled to require Mortgagee to also comply with the provisions of this section 21(b). Mortgagor and guarantors, if any, shall keep adequate books and records of account in accordance with real estate tax accounting practices consistently applied and furnish to Mortgagee prior to March 31st of each year: (a) an annual certified rent roll signed and dated by Mortgagor detailing the names and all tenants of the Improvements, the portion of the Improvements occupied by each tenant, the rent and any other charges payable under each lease, and the term of each lease; (b) an annual operating statement to be acceptable of the Mortgaged Property detailing the total revenues received and total expenses incurred to be prepared, certified by a general partner of Mortgagor, and prepared in accordance with Generally Accepted Accounting Principals ("GAAP"), constantly applied; (c) an annual balance sheet and profit and loss statement of Mortgagor, and of any guarantor, certified by a general partner of Mortgagor and prepared in accordance with GAAP, constantly applied; and (d) such annual balance sheets and profit and loss statements and other financial statements as may, from time to time, be reasonably required by Mortgagee. In addition, Mortgagor shall upon request of Mortgagee make available to Mortgagee Mortgagor's books, records, and owned or leased property for the audit and verification of any such statements.

22. Estoppel Affidavits. Mortgagor, within ten (10) days after written request from Mortgagee, shall furnish to the Mortgagee, or to any proposed assignor hereof, a written statement, duly acknowledged, setting forth the unpaid principal of and interest due hereunder and under the Promissory Note, and any other unpaid sums secured hereby, the rate of interest under the Promissory Note, the date the last installment of interest and/or principal was paid, whether or not any offsets or defenses exist against such principal and interest or other sums and that this Mortgage is a valid, legal and binding obligation which has not been modified or if modified, giving particulars of such modification. After request by Mortgagee, Mortgagor, within thirty (30) days, will furnish Mortgagee with estoppel certificates from any commercial lessees of the Mortgaged Premises under as required by their respective leases.

23. Use of Mortgaged Premises. Mortgagor covenants that, at all times during the term of the Loan, the Mortgaged Premises will be used for manufacturing facilities reasonably acceptable to Mortgagor. Mortgagor shall not suffer or permit the Mortgaged Premises or any portion thereof to be used by the public as such without restriction or in such manner as might reasonably tend to impair Mortgagor's title to the Mortgaged Premises or any portion thereof, or in such manner as might reasonably make possible a claim or claims of adverse usage or adverse possession by the public as such, or of implied dedication of the Mortgaged Premises or any portion thereof. Mortgagor shall not use or permit the use of the Mortgaged Premises or any portion thereof for any purpose, other than for the uses set forth in the first sentence of this

Paragraph 23, which in the reasonable opinion of Mortgagee would adversely affect the then value or character of the Mortgaged Premises or any part thereof.

24. Assignment of Rents. Mortgagor hereby assigns to Mortgagee the rents, security deposits, issues and profits of the Mortgaged Premises as further security for the payment of the Indebtedness and Mortgagor grants to Mortgagee the right to enter the Mortgaged Premises for the purpose of collecting the same, and to let the Mortgaged Premises, or any part thereof, and to apply said rents, issues and profits, after payment of all necessary charges and expenses, on account of the Indebtedness. This assignment and grant shall continue in effect until the Indebtedness is paid, but Mortgagee hereby waives the right to enter the Mortgaged Premises for the purpose of collecting said rents, issues and profits, and Mortgagor shall be entitled to collect and receive said rents, issues and profits until the occurrence of a event of Default by Mortgagor under the terms and provisions hereof. Such right of Mortgagor to collect and receive said rents, issue and profits may be revoked by Mortgagee upon any event of Default by Mortgagor under the terms and provisions of this Mortgage, upon giving written notice of such revocation to Mortgagor; Mortgagor shall not have the right or power to cancel, abridge or otherwise modify commercial tenancies or leases of the Mortgaged Premises or any part thereof in existence on the date of this Mortgage or to accept prepayments of instalments of rent to become due under any of the leases for a period of more than one (1) month in advance. Mortgagor shall not enter into any leases of the Mortgaged Premises without Mortgagee's prior written consent, which consent will not be unreasonably withheld or delayed. Mortgagor shall (a) fulfill or perform each and every term, covenant and provision of any such lease to be fulfilled or performed by the lessor thereunder, (b) give prompt notice to Mortgagee of any notice received by Mortgagor of default by the lessor thereunder, together with a complete copy of any such notice, and (c) enforce short of termination thereof, the performance or observance of each and every term, covenant and provision of any such lease by the lessee thereunder to be performed or observed; and that in the event of any event of Default under this Mortgage, Mortgagor shall pay monthly in advance to Mortgagee, or to any receiver appointed to collect said rents, issues and profits, the fair and reasonable rental value for the use and occupation of such part of the Mortgaged Premises as may be in possession of Mortgagor, and upon default in any such payment, will vacate and surrender possession of such part of the Mortgaged Premises to Mortgagee or to such receiver and, in default thereof, Mortgagor may be evicted by summary proceedings or otherwise. In the event of any inconsistency, Mortgagee shall elect which provisions shall control. Mortgagor shall procure and deliver to Mortgagee at any time within thirty (30) days after notice and demand, estoppel letters or certificates and subordination and attornment agreements from each lessee, tenant or occupant in possession of the Mortgaged Premises, in form and substance reasonably satisfactory to Mortgagee, and deliver to Mortgagee a recorded assignment of all the lessor's interest in all of the leases, in form and substance satisfactory to Mortgagee, and proof of due service of copy of said assignment on each lessee, either personally or by prepaid certified mail, return receipt requested.



25. Prepayment. No prepayment premium otherwise applicable under the Promissory Note will apply in connection with application of the insurance or condemnation proceeds by Mortgagor to reduce the outstanding Indebtedness.

26. Non-Merger. In the event the holder of this Mortgage shall acquire the fee title to the Mortgaged Premises or any part thereof, or a leasehold interest, or any other interest in the Mortgaged Premises, or any part thereof, by foreclosure or otherwise, Mortgagor agrees that the title to the Mortgaged Premises or such leasehold or any other interest in the Mortgaged Premises or any part thereof, shall not merge with the interests conveyed and mortgaged hereunder as a result of such acquisition or for any other reason, but shall remain separate and distinct estates for all purposes; provided, however, that in such event the holder of this Mortgage may, at its option, elect to merge such interests.

27. Payment of Fees, etc. Mortgagor will pay all appraisal fees, recording fees, taxes, abstract fees, title policy fees, Uniform Commercial Code search fees, escrow fees, reasonable attorneys' fees, and all other costs and expenses of every character incurred by Mortgagor or Mortgagee in connection with the closing of the loan evidenced by this Mortgage or otherwise attributable or chargeable to Mortgagor as owner of the Mortgaged Premises, and will reimburse Mortgagee for all such costs and expenses incurred by it. Mortgagor shall pay all expenses and reimburse Mortgagee for any expenditures, including reasonable attorneys' fees and legal expenses, incurred or expended in connection with (i) the breach by Mortgagor of any covenant herein or in any other related agreements executed by Mortgagor, or (ii) Mortgagee's exercise of any of its rights and remedies hereunder or any other instrument securing the payment of the Indebtedness or Mortgagee's protection of the Mortgaged Premises and its lien and security interest therein. Mortgagor will indemnify and hold harmless Mortgagee from and against, and reimburse it for, all claims, demands, liabilities, losses, damages, judgments, penalties, costs and expenses (including, without limitation, reasonable attorneys' fees) which may be imposed upon, asserted against or incurred or paid by it by reason of, on account of or in connection with any bodily injury or death or property damage occurring in or upon or in the vicinity of the Mortgaged Premises through any cause whatsoever or asserted against them or account of any transaction arising out of or in any way connected with the Mortgaged Premises or with this Mortgage, or any other instruments securing the payment of the Indebtedness, solely and except for its willful misconduct or gross negligence, but not its negligence. Any amount to be paid hereunder by Mortgagor to Mortgagee shall be a demand obligation owing by Mortgagor to Mortgagee.

28. Internal Revenue Stamps. If at any time the United States of America shall require internal revenue stamps to be affixed to this Mortgage, or any additional Promissory Note, Mortgagor will pay the same with any interest or penalties imposed in connection therewith.

29. Usury Laws. This Mortgage is subject to the express condition that at no time shall Mortgagor be obligated or required to pay interest on the principal balance due under this Mortgage at a rate which could subject the Mortgagee to either civil or criminal liability as a result of such payment being in excess of the maximum interest rate which Mortgagor is permitted by law to contract or agree to pay. If, by the terms of this Mortgage, Mortgagor is at any time required or obligated to pay interest on the principal balance due under this Mortgage at a rate in excess of such maximum rate, the rate of interest hereunder shall be deemed to be immediately reduced to such maximum rate and the interest payable shall be computed at such maximum rate, and all prior interest payments in excess of such maximum rate shall be applied and shall be deemed to have been payments in reduction of the principal balance hereunder.

30. Notices. Except as otherwise contemplated herein or required by statute, all notices and demands under and with respect to this Mortgage shall be in writing, and shall be delivered personally or served by registered or certified mail, return receipt requested, addressed to the respective parties at their respective addresses as set below:

TO MORTGAGOR: Ventura Partnership  
c/o Delta Tech Mold, Inc.  
3733 Ventura Drive  
Arlington Heights, IL 60004  
Attn: Chief Executive Officer

With a Copy to: Manfred Klemen  
5 Aberdeen Road  
Hawthorne Woods, IL 60047

And With a Copy to: Klaus Cisliek  
Box 2318 RFD  
Long Grove, IL 60047

And With a Copy to: Susan Dawn  
Panter, Dawn & Associates  
Three First National Plaza  
6<sup>th</sup> Floor  
Chicago, IL 60602

TO MORTGAGEE:  
American National Bank and  
Trust Company of Chicago  
120 South LaSalle Street  
Chicago, Illinois 60606  
Attn: Neil J. Prendergast

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With a Copy to: Michael S. Smith  
Foley & Lardner  
330 North Wabash Avenue  
33<sup>rd</sup> Floor  
Chicago, IL 60611

or at any other address at which any such party may hereinafter designate by written notice to the other parties, said written notice given in the same manner as above provided as to notices and demands. Any notice given in accordance herewith shall conclusively be deemed to be given on the date of personal delivery or three (3) days after the date delivered to the post office, postage prepaid, for mailing by registered or certified mail, return receipt requested.

31. Extensions and Modifications. No extension or modification of this Mortgage or of the Indebtedness shall affect the lien of this Mortgage or extinguish the liability of any present or subsequent obligor to pay the debt hereby secured according to the terms and conditions of their respective obligations, unless and until such liability is expressly released in writing by Mortgagee.

32. Further Assurances. Mortgagor shall execute and deliver upon demand of Mortgagee and to any subsequent holder hereof all such further instruments and will perform all such further acts as may be reasonably necessary or proper to carry out the complete purposes of this Mortgage, including, but not limited to the perfecting of the Mortgagee's security interest in the Mortgaged Premises.

33. Remedies Cumulative. Mortgagee shall not be limited exclusively to the rights and remedies herein stated, but shall be entitled to every additional right and remedy now and hereafter afforded by law and may enforce the same at any time and in any order according to law.

34. No Oral Modifications. This Mortgage cannot be changed orally, but may be changed or amended only by a written agreement executed by Mortgagor and Mortgagee. This Mortgage shall bind and inure to the benefit of the respective successors and assigns of Mortgagor and of Mortgagee.

35. Severability. If any provision of this Mortgage is held to be invalid or unenforceable by a court of competent jurisdiction, the other provisions of this Mortgage shall remain in full force and effect and shall be liberally construed in favor of Mortgagee in order to give effect to such other provisions of this Mortgage.

36. Governing Law. This Mortgage and the rights and obligations of the parties hereto shall be governed by and interpreted in accordance with the laws of the State of Illinois. The parties consent that any process or notice of motion or other application to the court or judge thereof may be served by registered or certified mail, or by personal service, provided a reasonable time for appearance is allowed.

37. Waiver of Right to Jury. Mortgagor hereby waives trial by jury in any by either party hereto against the other, or in any counterclaim asserted by Mortgagee against Mortgagor, or in any matters whatsoever arising out of or in any way connected with this Mortgage or the Indebtedness.

38. Indemnification. Mortgagor shall protect, indemnify and save harmless Mortgagee, except in the case of Mortgagee's willful misconduct or gross negligence and until Mortgagee is in possession and control of the Mortgaged Premises, from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including, without limitation, reasonable attorneys' fees and expenses), imposed upon or incurred by or asserted against Mortgagee by reason of: (a) ownership of this Mortgage, the Mortgaged Premises or any interest therein or receipt of any rents; (b) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Mortgaged Premises or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (c) any use, non-use or condition in, on or about the Mortgaged Premises or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (d) any failure on the part of Mortgagor to perform or comply with any of the terms of this Mortgage; or (e) performance of any labor or services or the furnishing of any materials or other property in respect of the Mortgaged Premises or any part thereof. Any amounts payable to Mortgagee by reason of the application of this paragraph shall become immediately due and payable and shall bear interest at the interest rate provided for herein from the date loss or damage is sustained by Mortgagee until paid. The obligations of Mortgagor under this paragraph shall survive any termination or satisfaction of this Mortgage.

39. Waiver of Appraisalment, Valuation, Stay, Extension and Redemption Laws. Mortgagor agrees to the full extent permitted by law that in case of a default on its part hereunder, neither Mortgagor nor anyone claiming through or under it shall or will set up, claim or seek to take advantage of any appraisalment, valuation, stay of execution, notice of election to mature or declare due the whole of the Indebtedness, extension or redemption laws now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Mortgage or the absolute sale of the Mortgaged Premises or the final and absolute putting into possession thereof, immediately after such sale, of the purchasers thereat, and Mortgagor, for itself and all who may at any time claim through or under it, hereby waives, to the full extent that it may lawfully so do, the benefit of all such laws, and any and all right to have the assets comprising the Mortgaged Premises marshalled upon any foreclosure of the lien hereof and agrees that Mortgagee or any court having jurisdiction to foreclose such lien may sell the Mortgaged Premises in part or as an entirety. If any law referred to in this paragraph and now in force, of which Mortgagor, its successors and assigns, might take advantage despite this paragraph, shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to preclude the application of this paragraph. Without limiting the foregoing, Mortgagor hereby waives all rights of redemption from sale under any order or decree of foreclosure of this Mortgage on its own behalf and on behalf of each

and every person except decree and judgment creditors of Mortgagor (in its representative capacity), who may acquire any interest in or title to the Mortgaged Premises subsequent to the date thereof.

40. Plural and Singular. That wherever used in this Mortgage, unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, the word "lease" shall mean "tenancy, subtenancy, lease and/or sublease", the word "Mortgagor" shall mean "Mortgagor and any subsequent owner or owners of the Mortgaged Premises", and if the Mortgagor consists of more than one party, such Mortgagors shall be jointly and severally liable under any and all obligations, covenants and agreements of the Mortgage contained herein, the word "Mortgagee" shall mean "Mortgagee or any subsequent holder or holders of this Mortgage", and the word "person" shall mean "an individual, corporation, partnership or unincorporated association".

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

42. Loan. Borrower represents and agrees that the obligations secured hereby: (a) constitute a business loan which comes within the purview of paragraph (c) and a loan secured by a mortgage in real estate which comes within the purview of paragraph (a) of 815 ILCS 205/4(1) 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 25, 1878, as amended; and (b) is an exempted transaction under the Truth-In-Lending Act, 15 U.S.C. Sec. 1601 et seq.

43. Parking Space. Mortgagor covenants and agrees to comply with all minimum parking requirements of applicable governmental regulations and ordinances, and all leases with tenants of the Mortgaged Premises.

44. Environmental. (a) Mortgagor represents and warrants that Mortgagor has never generated, stored or disposed of any petroleum products, oil, hazardous or toxic materials and/or wastes or any other Hazardous Materials on the Mortgaged Premises and that there has been no generation, storage disposal, or release of such substances on the Mortgaged Premises by anyone else. At its sole cost and expense, Mortgagor shall comply with any and all Environmental Laws, with respect to the discharge and removal of any such wastes and shall keep the Mortgaged Premises free of any lien imposed pursuant to such laws, rules, regulations or orders. In the event Mortgagor fails to do so, Mortgagee may (but shall not be obligated to) (i) declare an event of default under this Mortgage and/or (ii) cause the Mortgaged Premises to be freed from Hazardous Materials and the cost of the removal shall be additional Indebtedness evidenced by this Mortgage and shall become due and payable immediately upon demand and with interest thereon at the Default Rate. Mortgagor



agrees not to, and further agrees not to permit anyone else to, release or dispose of any Hazardous Materials in or on the Mortgaged Premises without the express approval of Mortgagee, and any such release or disposal will be in compliance with all Environmental Laws and reasonable conditions, if any, established by Mortgagee. Mortgagor shall give Mortgagee and its agents and its employees access to the Mortgaged Premises and hereby specifically grants to Mortgagee a license, effective (i) immediately, if, in the reasonable opinion of Mortgagee, irreparable harm to the environment, the Mortgaged Premises or persons is imminent or (ii) otherwise, upon the expiration of fifteen (15) days after notice to Mortgagor, to remove the Hazardous Materials unless Mortgagee has within such period diligently commenced proceedings to remove such Hazardous Materials. Mortgagor hereby agrees to indemnify and hold Mortgagee free and harmless from and against all direct proximate and actual loss, cost, damage (including consequential damages suffered by third-party claimants) or expense (including, without limitation, reasonable attorneys' fees and costs, including appellate counsels' reasonable fees and costs, incurred in the investigation of Mortgaged Premises and the investigation, defense and settlement of claims) that Mortgagee may sustain as a result of or in connection with compliance by Mortgagee with any Environmental Laws which compliance is necessitated by Mortgagor's failure to comply with its obligations under this Paragraph 45 specifically excluding, however, loss or liability resulting from Mortgagee's gross negligence or willful misconduct.

(b) Upon Mortgagee's request, at any time and from time to time during the existence of this Mortgage provided that at the time of any such request by Mortgagee, Mortgagee has reasonable cause to believe that there may be a violation of any Environmental Laws relating to the Mortgaged Premises and/or that Hazardous Materials are in, under or upon the Mortgaged Premises or in any portion thereof, Mortgagor will provide, at Mortgagor's sole cost and expense, an inspection or audit ("Inspection") of the Mortgaged Premises from an engineering or consulting firm approved by Mortgagee indicating the presence or absence of such substances or any substances referred to in this Paragraph 45 in or on the Mortgaged Premises. If Mortgagor fails to provide an Inspection within fifteen (15) days after written notice subject to extension if Mortgagee is diligently proceeding to obtain such report, then Mortgagee may order it. Mortgagor shall, as of the date of this Mortgage, grant to Mortgagee and its employees and agents access to the Mortgaged Premises at all reasonable times and an irrevocable license to undertake such Inspections as Mortgagee deems necessary to ensure that Mortgagor and the Mortgaged Premises are in compliance with all Environmental Laws. The cost of such Inspections shall be additional Indebtedness secured by this Mortgage and shall be immediately due and payable without notice, and with interest thereon, at the Default Rate.

(c) The term "Environmental Law" shall be defined as any statutory law or case law pertaining to health or the environment, or Hazardous Materials, including without limitation the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), as codified at

42 U.S.C. § 9601 *et seq.*; the Resource Conservation and Recovery Act of 1976, as amended, as codified at 42 U.S.C. § 6901 *et seq.*; the Superfund Amendments and Reauthorization Act of 1986, as codified at 42 U.S.C. § 9671, *et seq.*; the term "release" shall have the meaning specified in CERCLA; provided, in the event CERCLA is amended to broaden the meaning of any term defined thereby, such broader meaning shall apply subsequent to the effective date of such amendment, and provided, to the extent that the laws of the State of Illinois establish a meaning for a "release" which is broader than that specified in CERCLA, such broader meaning shall apply. Mortgagor represents and warrants to Mortgagee that the Mortgaged Premises and Mortgagor are not in violation of or subject to any existing, pending or threatened investigation or inquiry by any governmental authority or any response costs or remedial obligations under any Environmental Law and this representation and warranty would continue to be true and correct following disclosure to the applicable governmental authorities of all relevant facts, conditions and circumstances, if any, pertaining to the Mortgaged Premises; that Mortgagor has not obtained and is not required to obtain any permits, licenses or similar authorization to construct, occupy, operate or use any buildings, improvements, fixtures or equipment forming a part of the Mortgaged Premises by reason of any Environmental Law. Mortgagor hereby agrees to pay any fines, charges, fees, expenses, damages, losses, liabilities, or response costs arising from or pertaining to the application of any such Environmental Law to the Mortgaged Premises judgments, fines, charges, fees, expenses, damages, losses, liabilities, response costs, or reasonable attorneys' fees and expenses arising from the application of any such Environmental Law to the Mortgaged Premises or Mortgagee; and this indemnity shall survive any foreclosure of this Mortgage or the taking by the Mortgagee of a deed in lieu of foreclosure provided, however, Mortgagor shall have no liability for any loss or liability arising from Mortgagee's gross negligence or willful misconduct. Further, following foreclosure or deed in lieu of proceedings, pursuant to Mortgagee's or its successor or assigns taking over possession and/or control of the Mortgage Premises, Mortgagor shall have no liability for any loss or liability resulting from the Environmental Laws to the Mortgage Premises unless due to a preexisting condition arising prior to Mortgagee' or its successors and assigns acquiring possession and control of the Mortgage Premises. Mortgagor agrees to notify Mortgagee in the event that any governmental agency or other entity notifies Mortgagor that it may not be in compliance with any Environmental Laws

(d) The term "Hazardous Materials" includes, without limitation, any flammable explosives, radioactive materials, petroleum products, oil, hazardous materials, hazardous wastes, hazardous or toxic substances or related materials now or hereafter defined as such in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601, *et. seq.*), the Hazardous Materials Transportation Act, as

amended (42 U.S.C. Section 1801, *et . seq.*), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Section 6901, *et seq.*) and in the regulations adopted and publications promulgated pursuant thereto, or any other federal, state or local governmental law, ordinance, rule or regulation or Applicable Environmental Laws.

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

IN WITNESS WHEREOF, Mortgagor has duly executed this Mortgage as of the day  
and year first above written.

MORTGAGOR:

**CHICAGO TITLE LAND TRUST  
COMPANY**, as trustee of Trust Number  
54617 under Trust Agreement dated December  
30, 1969



By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**VENTURA PARTNERSHIP**, an Illinois  
general partnership

By: DTM Associates, an Illinois family  
limited partnership  
Its: General Partner

By: DTM Associates, Inc., an Illinois  
corporation  
Its: General Partner

By: \_\_\_\_\_  
Name: Klaus Cisliek  
Its: Authorized Officer

And By: Klemm Family Limited Partnership,  
an Illinois family limited partnership  
Its: General Partner

By: \_\_\_\_\_  
Name: Manfred Klemm  
Its: General Partner

It is expressly understood and agreed by and between the parties hereto, anything to the contrary notwithstanding, that each and all of the warranties, indemnities, representations, covenants, undertakings and agreements herein made on the part of the Trustee while in form purporting to be the warranties, indemnities, representations, covenants, undertakings and agreements of said Trustee are nevertheless each and every one of them, made and intended not as personal warranties, indemnities, representations, covenants, undertakings and agreements by the Trustee or for the purpose or with the intention of binding said Trustee personally but are made and intended for the purpose of binding only that portion of the trust property specifically described herein, and this instrument is executed and delivered by said Trustee not in its own right, but solely in the exercise of the powers conferred upon it as such Trustee; and that no personal liability or personal responsibility is assumed by nor shall at any time be asserted or enforceable against the undersigned land trustee, on account of this instrument or on account of any warranty, indemnity, representation, covenant or agreement of the said Trustee in this instrument contained, either expressed or implied, all such personal liability, if any, being expressly waived and released.

IN WITNESS WHEREOF, Mortgagor has duly executed this Mortgage as of the day and year first above written.

MORTGAGOR:

**CHICAGO TITLE LAND TRUST  
COMPANY**, as trustee of Trust Number  
54617 under Trust Agreement dated December  
30, 1969

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**VENTURA PARTNERSHIP**, an Illinois  
general partnership

By: DTM Associates, an Illinois family  
limited partnership  
Its: General Partner

By: DTM Associates, Inc., an Illinois  
corporation  
Its: General Partner

By: Klaus Cisliek  
Name: Klaus Cisliek  
Its: Authorized Officer

And By: Klemm Family Limited Partnership,  
an Illinois family limited partnership  
Its: General Partner

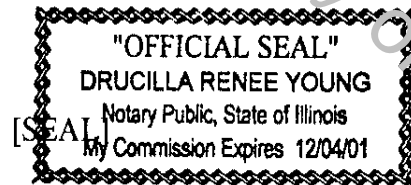
By: Manfred Klemm  
Name: Manfred Klemm  
Its: General Partner



STATE OF ILLINOIS       )  
                                      ) SS:  
COUNTY OF COOK        )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that **Klaus Cisliek**, as an authorized officer of DTM Associates, Inc., the general partner of DTM Associates, one of the general partners of Ventura Partnership, an Illinois general partnership, who is known personally to me to be the same person whose name is subscribed to the foregoing instrument appeared to me this day in person and acknowledged that he signed and delivered said instrument on behalf of Ventura Partnership for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal on September 28, 2000.



Drucilla Renee Young  
Notary Public

My commission expires:

# UNOFFICIAL COPY


00773640

STATE OF ILLINOIS       )  
                                      ) SS:  
COUNTY OF COOK        )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that KAREN MICHEL, as an authorized officer of CHICAGO TITLE LAND TRUST COMPANY, as Trustee, who is known personally to me to be the same person whose name is subscribed to the foregoing instrument appeared to me this day in person and acknowledged that he signed and delivered said instrument on behalf of CHICAGO TITLE LAND TRUST COMPANY, as Trustee, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal on SEP 28 2000, 2000.

[SEAL]

  
\_\_\_\_\_  
Notary Public

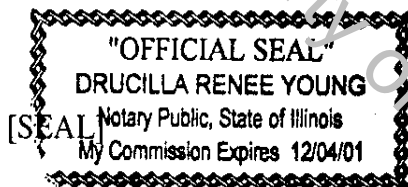
My commission expires:



STATE OF ILLINOIS       )  
                                      ) SS  
COUNTY OF COOK       )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Manfred Klemm, the general partner of the Klemm Family Limited Partnership, an Illinois family limited partnership, the general partner of Ventura Partnership, who is known personally to me to be the same person whose name is subscribed to the foregoing instrument appeared to me this day in person and acknowledged that he signed and delivered said instrument on behalf of Ventura Partnership for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal on September 28, 2000.

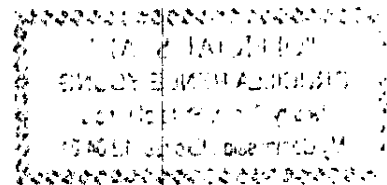


*Drucilla Renee Young*  
Notary Public

My commission expires:

UNOFFICIAL COPY

Property of Cook County Clerk's Office



## EXHIBIT A

### (Legal Description of the Land)

All of Lots 9 and 10 and that part of Lot 11 described as follows: Beginning at the Northeast corner of said Lot 11; thence South 0 degrees 14 minutes 14 seconds West, a distance of 33.72 feet to a point; thence North 89 degrees 45 minutes 46 seconds West, a distance of 224.26 feet to a point; thence North 43 degrees 49 minutes 24 seconds West, a distance of 127.77 feet to a point of intersection with the Southeasterly right-of-way line of Ventura Drive; thence Northeasterly 83.31 feet along the arc of a circle convex of the Southeast, and having a radius of 282.00 feet to the Northwest corner of said Lot 11; thence south 64 degrees 14 minutes 19 seconds East, a distance of 296.62 feet to the hereinabove designated point of beginning, all of 53 Park of Commerce being a Subdivision of parts of Government Lots 1 and 2 in the West ½ of Section 6, Township 42 North, Range 11, East of the Third Principal Meridian in Cook County, Illinois.

Commonly known as 3733 Ventura Drive, Arlington Heights, IL 60004

Permanent Index Number: 03-06-304-018