

MORTGAGE AND SECURITY AGREEMENT

A00288/9/5

THIS INDENTURE WITNESSETH, That WINTZ PROPERTIES, INC. (herein together with its successors and assigns referred to as the "Mortgagor") hereby mortgages, grants, conveys, and warrants to COMMERCIAL STATE BANK OF MINNESOTA and FARMERS AND MERCHANTS STATE BANK OF NEW ULM (hereinafter together with their successors and assigns collectively referred to as the "Mortgagee") the real estate situated in the County of Cook, State of Illinois, described on the attached Exhibit A.

TOGETHER WITH all and singular the easements, tenements, hereditaments, appurtenances and other rights and privileges thereunto belonging or in any wise now or hereinafter appertaining, and the rents, issues and profits thereof which are pledged primarily and in addition Mortgagor hereby grants to Mortgagee a security interest in all the equipment necessary for the operation of the property mortgaged hereby. Mortgagor also grants Mortgagee a security interest in all of the Mortgagor's personal property, including furniture, fixtures and equipment, contracts with third parties, licenses (including liquor licenses and all proceeds therefrom), apparatus, fittings, leases, income, rents, and articles of personal property of every kind and nature whatsoever, located at, pertaining to the operations of, or usable in connection with the Project, all whether now owned or hereafter acquired, including without limitation: (i) all construction materials; all gas, water and electrical equipment, plumbing, conduits, ducts, tanks, pumps and compressors, air-cooling, lifting, communications and power equipment, engines and motors, elevators and switchboards; all cleaning equipment, shades, awnings, floor coverings and carpeting, refrigerators, stoves, dishwashers, cabinets, screens, storm doors and windows, musical and entertainment equipment; and all replacements, repairs and substitutions of the same; (ii) any and all present or future leases or tenancies, written or oral, covering or affecting all or any part of the property mortgaged hereby together with: (a) all guarantees of the aforesaid leases including guarantees of tenant performance thereof; (b) all insurance proceeds, including rental loss coverage and business interruption coverage, as to said leases; (c) all awards or proceeds from any condemnation of the property mortgaged hereby or any part thereof; (d) all judgments or settlements of claims in favor of Mortgagor and arising out of said leases in any court proceeding, including any bankruptcy, reorganization, insolvency or debtor proceeding or case or otherwise; (e) all security deposits made thereunder including security deposits held in Mortgagor's bank account or in any property manager's bank account; (iii) all rents and other income or payments of any kind due or payable or to become due or payable as the result of any use, possession or occupancy of all or any portion of the property mortgaged hereby or as a result of the use or lease of any personal property constituting a part of the property mortgaged hereby including without limitation all accounts receivable arising out of the leasing and operation of the business conducted at or in relation to the Mortgaged Property; (iv) all revenues from the property mortgaged hereby in excess of all costs, charges, and expenses which are directly attributable to the operation, repair, and maintenance of the property mortgaged hereby including all taxes, rates, charges, levies and assessments imposed by any competent authority upon or in respect of the property mortgaged hereby;

*[Handwritten signature]*

03070265

BOX 333

This instrument prepared by:

*sent to:*  
Grover C. Sayre, III  
O'Neill, Burke, O'Neill, Leonard & O'Brien, Ltd.  
100 South Fifth Street, Suite 1200  
Minneapolis, Minnesota 55402

*Commonly known as*  
1940 W 33rd St. Chicago

P.I.N. 17-31-207-030; 17-31-207-036; 17-31-207-029;  
17-31-208-015; 17-31-207-037; 17-31-208-008;  
17-31-208-009; 17-31-207-039; 17-31-208-017-

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(v) all contracts with third parties related to or having to do with the managing, marketing, maintenance or operation in the normal course of business of the property mortgaged hereby; (vi) all trademarks, tradenames, or symbols under which the Mortgaged property is operated or the business of Mortgagor at the Mortgaged Property is conducted; (vii) all monetary deposits which Mortgagor has been required to give to any public or private utility company with respect to utility services furnished, or to be furnished, to the Mortgaged Property including without limitation gas, waste removal, water, electric, sewer and telephone services; and (viii) all permits, licenses, franchises, certificates, and other rights and privileges obtained by Mortgagor in connection with the Mortgaged Property. Upon default pursuant to the provisions of this Agreement, Mortgagee becomes entitled to all remedies provided by the Uniform Commercial Code as adopted in the State of Illinois. (All of the foregoing is collectively referred to herein as the "Mortgaged Property"). Mortgagor hereby covenants and agrees that upon the occurrence of an event of default hereunder, Mortgagee may, in addition to any other remedy provided for herein or which it may have at law or equity, exercise all rights granted to it under the Illinois Uniform Commercial Code. The filing of this Mortgage shall constitute the filing of a financing statement in the office wherein it is filed and a carbon, photograph or other reproduction of this document may also be filed as a financing statement.

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

## **THE MORTGAGOR HEREBY COVENANTS AND AGREES:**

1. This Mortgage is given as security for the performance and observance of the terms, conditions, stipulations, provisions, covenants and agreements hereof and of any other agreement, document or instrument given by Mortgagor to Mortgagee to secure indebtedness secured hereby, and for the payment of all sums which may or come due hereunder and to secure to the Mortgagee prompt payment and performance of all sums guaranteed and all obligations of holder of the beneficial interest under the Land Trust, Wintz Properties, Inc., under the Corporate Guaranty Agreement dated December 21, 1993 (the "Guaranty"), a copy of which is attached hereto as Exhibit C and made a part hereof, and any and all advances now or hereafter made by Mortgagee under the terms and conditions of this Mortgage, and any renewals, modifications, amendments or extensions of the indebtedness guaranteed by the Guaranty. In no event will the advancement under this Mortgage exceed three (3) times Eight Million One Hundred Twenty-Three Thousand Seven Hundred Forty Seven Dollars (\$8,123,747.00).
2. This Mortgage is also given as security for payment of amounts guaranteed by and performance by Wintz Properties, Inc. and Mortgagor of its obligations under the Guaranty and in connection therewith the Mortgagor agrees as follows:
  - A. Each and all of the terms, provisions, restrictions, covenants, and agreements set forth in the Guaranty, and in each and every supplement thereto or amendment thereof which may at any time or from time to time be executed and delivered by the parties thereto or their successors and assigns, are incorporated herein by reference to the same extent as though each and all of said terms, provisions, restrictions, covenants and agreements were fully set out herein and as though any amendment or supplement to the Guaranty

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were fully set out in an amendment or supplement to this Mortgage; and Mortgagor does hereby covenant and agree well and truly to abide by, perform and be governed and restricted by each and all of the matters provided for by the Guaranty and so incorporated herein to the same extent and with the same force and effect as if each and all of said terms, provisions, restrictions, covenants and agreements so incorporated herein by reference were set out and repeated herein at length.

B. **Construction** - The provisions of this Mortgage do not supersede, but are supplemental to the provisions of the Guaranty. Any default by Mortgagor under the terms and conditions of the Guaranty shall constitute an event of default under this Mortgage. Mortgagor and Mortgagee intend that Mortgagee shall enjoy all the benefits and protections of the various provisions of both this Mortgage and the Guaranty.

3. Mortgagor is well and lawfully seized of the Mortgaged Property as a good and infeasible estate in fee simple and has good right and full power to sell and convey the same; that the Mortgaged Property is free and clear of all encumbrances, except the Permitted Encumbrances set forth on the attached Exhibit B; that the Mortgagor will make any further assurances of title that the Mortgagee may require and will warrant and defend the Mortgaged Property against all claims and demands whatsoever.
4. Mortgagor will pay the indebtedness hereby secured and interest thereon promptly on the days specified for the same to become due and payable, and also on demand any other indebtedness that may accrue and become due and payable to the Mortgagee under the terms and provisions of this Mortgage.
5. Mortgagor will keep protected and in good order, repair and condition at all times the buildings and improvements (including fixtures) now standing or hereafter erected or placed upon the Mortgaged Property, and any and all appurtenances, apparatus and articles of personal property, including but not limited to furniture, furnishings and equipment, nor or hereafter in or attached to or used in connection with said buildings or improvements, promptly replacing any of the aforesaid which may become lost, destroyed or unsuitable for use.
6. During the entire term of this Mortgage, Mortgagor will maintain a policy or policies of insurance insuring the buildings and improvements now existing or hereafter erected on the Mortgaged Property in the amounts and for the categories of coverage reasonably required by the Mortgagee. In the event of any foreclosure action or any voluntary transfer of the Mortgaged Property with Mortgagee's consent, all right, title and interest of Mortgagor in and to any policy of insurance then in force shall pass to the purchaser or grantee.

In the event of any loss or damage, Mortgagor will give immediate notice thereof to Mortgagee, and Mortgagee may thereupon make proof of such loss or damage, if the same is not promptly made by Mortgagor. All proceeds of insurance in the event of such loss or damage shall be payable to Mortgagee, and any affected insurance company is authorized and directed to make payment directly to Mortgagee. Mortgagee is authorized and empowered to settle, adjust, or compromise any claims for loss, damage, or destruction under any policy or policies of insurance. All such insurance proceeds may, at the sole discretion of Mortgagee,

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be applied to the restoration, repair, replacement, or rebuilding of the Mortgaged Property, or to and in reduction of any indebtedness secured by this Mortgage. The Mortgagee is hereby irrevocably appointed by the Mortgagor as attorney of the Mortgagor to assign any policy in the event of the foreclosure of this Mortgage or other extinguishment of the indebtedness secured hereby, and Mortgagor shall have no right to reimbursement for premiums unearned at the time of any such assignment.

7. Mortgagor will not commit or suffer any strip or waste of the Mortgaged Property or any violation of any law, regulation or ordinance affecting the Mortgaged Property and will not commit or suffer any demolition, removal or material alteration of any of the buildings or improvements (including fixtures) on the Mortgaged Property without the written consent of the Mortgagee, and will not violate nor suffer the violation of the covenants and agreements, if any, of record against the Mortgaged Property.
8. Mortgagor will pay when due all charges for water, water delivery, gas, electric power and light, sewers, waste removal, any and all rents and amounts payable under any ground lease or senior or junior trust deed, mortgage or other encumbrance on or of the Mortgaged Property, bills for repairs, any grazing lease or permit fees or rentals, and all other claims, encumbrances, and expenses incident to the ownership and occupancy of the Mortgaged Property. Mortgagor will further pay and discharge, prior to the commencement of foreclosure proceedings for nonpayment of taxes, and on request furnish Mortgagee with suitable evidence of payment of, all taxes, assessments and other governmental charges on the Mortgaged Property, as well as claims for labor and material and any claim capable of supporting a lien or charge on the Mortgaged Property; provided, however, that any such taxes, assessments, charges, or claims need not be paid so long as Mortgagor is in good faith contesting such payment by appropriate proceedings which avoid foreclosure of any lien securing said claim, and that sufficient funds or an acceptable bond ensuring the prompt disposition of said claim are deposited with Mortgagee. Additionally and in the event Mortgagor fails to so satisfy any such claim, Mortgagee may, after notice, pay the same directly, and thereafter, at its option, demand of the Mortgagor immediate reimbursement for any expense so paid.
9. If Mortgagor shall neglect or refuse to keep in good repair the property referred to in paragraph (5), to replace the same as herein agreed, to maintain and pay the premiums for insurance which may be required under paragraph (6) or to pay and discharge all taxes, assessments and charges of every nature and to whomever assessed, as provided for in paragraph (8), the Mortgagee may, at its election, cause such repairs or replacements to be made, obtain such insurance or pay said taxes, assessments and charges and any amounts paid as a result thereof together with interest thereon at the interest rate established by the Mortgagee from the date of payment, shall be immediately due and payable by the Mortgagor to the Mortgagee, and until paid shall be added to and become a part of said principal debt secured hereby, and the same may be collected as a part of said principal debt in any suit hereon or upon the Guaranty; or the Mortgagee, by the payment of any tax, assessment or charge, may, if it sees fit, be thereby subrogated to the rights of the State, County, Village and all political or governmental subdivisions. No such advances shall be deemed to relieve the Mortgagor from any default hereunder or impair any rights or remedies consequent thereon, and the exercise of the rights to make advances granted in this paragraph shall be optional with the Mortgagee and not

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obligatory and the Mortgagee shall not in any case be liable to the Mortgagor for a failure to exercise any such right.

10. Mortgagor will pay all sums, the failure to pay which may result in the acquisition of a lien prior to the lien of this Mortgage, before such a prior lien may attach or which may result in conferring upon a tenant of any part of the Mortgaged Property a right to recover such sums as prepaid rent.
11. After default or breach, if any sale proceeding or lawsuit is commenced, or any attorney retained to collect any amounts secured hereby or to enforce any rights granted Mortgagee hereunder, Mortgagor will pay Mortgagee's reasonable attorneys' fees and costs incurred as a result of its enforcing its rights under the Guaranty and the agreements which secure its repayment, and its costs and expenses in connection with any sale proceedings or lawsuit. In addition, Mortgagor will pay a reasonable fee for title searches made in preparation for and in the conduct of any such proceedings or suit. All of the foregoing fees and expenses shall be secured by this Mortgage.
12. That, if any action or proceeding be commenced (excepting an action to foreclose this Mortgage or to collect the debt hereby secured or to enforce any other agreement related to the debt hereby secured), to which action or proceeding the Mortgagee is made a party by reason of the execution of this Mortgage or the Guaranty which it secures, or any other document or agreement related to the debt hereby secured, or in which the Mortgagee deems it necessary to defend in order to uphold the lien of this Mortgage or the priority thereof or possession of the Mortgaged Premises, or otherwise to protect its security hereunder, or any other document or agreement related to the debt hereby secured, all sums paid or incurred by the Mortgagee for counsel fees and other expenses in such action or proceeding shall be repaid by Mortgagor, together with interest thereon from date of payment by Mortgagee, and all such sums and the interest thereon shall be immediately due and payable and be secured hereby, having the benefit of the lien hereby created and of its priority.
13. Mortgagor will furnish Mortgagee with such information concerning the financial condition of the Mortgaged Property as Mortgagee may request from time to time. During normal business hours, Mortgagor will allow representatives of Mortgagee free access to the Mortgaged Property and to inspect all books, records and contracts relating thereto.
14. Immediately upon obtaining knowledge of the institution of any proceedings for the condemnation or taking by eminent domain of the Mortgaged Property or any portion thereof, or any other proceedings arising out of injury or damage to the property, or any portion thereof, Mortgagor will notify Mortgagee of the pendency of such proceedings. Mortgagee may participate in any such proceedings and Mortgagor shall from time to time deliver to the Mortgagee all instruments requested by it to permit such participation. Mortgagor shall, at its expense, diligently prosecute any such proceedings, and shall consult with Mortgagee, its attorneys and experts, and cooperate with them in the carrying on or defense of any such proceedings. If all or any part of the Mortgaged Property is damaged, condemned, taken or acquired, either temporarily or permanently, in any condemnation proceeding, or by exercise of the right of eminent domain, or by the alteration of the grade of any street affecting said

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Mortgaged Property, the amount of any award or other payment for such taking or damages to the extent of the full amount of the then remaining unpaid indebtedness is hereby assigned to Mortgagee, and Mortgagee is empowered to collect and receive the same. Any award or payment so received may be, at Mortgagee's discretion, wholly or partially retained and applied to the indebtedness secured by this Mortgage, whether or not then due and payable; or wholly or partially released to Mortgagor for the purpose of altering, restoring, or rebuilding any part of the Mortgaged Property altered, damaged, or destroyed as the result of such taking, alteration, condemnation, or proceeding; provided, however, that Mortgagee is not obligated to see to the application of any amounts so released.

15. Mortgagor shall assign to the Mortgagee, upon request, as further security for the indebtedness secured hereby, the Lessor's interest in any or all leases, and the Mortgagor's interest in all agreements, contracts, licenses and permits affecting the property subject to this Mortgage, such assignments to be made by instruments in form satisfactory to the Mortgagee; but no such assignment shall be construed as a consent by the Mortgagee to any lease agreement, contract, license or permit so assigned, or to impose upon the Mortgagee any obligations with respect thereto. Mortgagor will faithfully keep and perform all of the obligations of the landlord under all of the leases now or hereafter assigned to Mortgagee hereunder or under any other assignment between the parties and not permit to accrue to any tenant under any such lease any right to prepaid rent pursuant to the terms of any lease other than the usual prepayment of rent as would result from the acceptance on the first day of each month of the rent for the ensuing month, according to the terms of the various leases.
16. All notices required under the terms of this Mortgage are sufficient either (i) three (3) days after their deposit in the United States mail postage prepaid, or (ii) two (2) days after their deposit in a nationally recognized overnight courier service, or (iii) on the day of their personal delivery, if addressed or delivered to Mortgagee or Mortgagor at their following respective addresses, or such other address as is specified in writing by any party to the other, provided that no change of address by Mortgagor shall be effective unless Mortgagor first serves notice of such change of address to Mortgagee in writing by certified mail with return receipt requested, retaining a copy of such return receipt in its files. In any event, Mortgagor shall exercise reasonable diligence to ensure that Mortgagee is at all times advised of the correct address of each, and any changes thereto, stipulated as the following as of the date of this Mortgage:

A. To Mortgagee: **Commercial State Bank of Minnesota**  
2000 Minnesota World Trade Center  
30 East 7th Street  
St. Paul, Minnesota 55101  
Attn: Richard Kastner

And To: **Farmers and Merchants State Bank of New Ulm**  
322 North Minnesota Street  
P.O. Box 757  
New Ulm, Minnesota 56073  
Attn: John Wisniewski

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- B. To Mortgagor: **Wintz Properties, Inc.**  
2323 Terminal Road  
St. Paul, Minnesota 55113  
Attn: George L. Wintz, President
17. Mortgagor will not acquire any fixtures, equipment, furnishings or apparatus covered by this Mortgage subject to any security interest or other charge or lien taking precedence over this Mortgage.
18. In the event the ownership of the Mortgaged Property, or any part thereof, becomes vested in a person other than the Mortgagor, the Mortgagee may deal with such successor or successors in interest with reference to this Mortgage and the debt hereby secured in the same manner as with the Mortgagor, without in any manner vitiating or discharging the Mortgagor's liability hereunder, or upon the debt hereby secured. This paragraph shall not be construed as permission for any such transfer.
19. Except as otherwise provided in the Guaranty, Mortgagor agrees that Mortgagor will not sell, transfer, encumber, assign, convey, lease or in any manner dispose of the Mortgaged Property, or any part thereof, or turn over the management or operation of any business on the Mortgaged Property to any other person, firm or corporation without the prior written consent of Mortgagee. Mortgagor shall give prior written notice of any proposed transaction which requires Mortgagee's consent, and Mortgagor shall furnish to Mortgagee such information as Mortgagee may reasonably require.
20. In the event of the imposition after the date of this Mortgage of any law of the United States of America, the State of Illinois, or any municipality, or of any government, domestic or foreign, claiming to have jurisdiction hereof, deducting from the value of real property for the purposes of taxation of mortgages, deeds of trust or of debts secured by mortgages or deeds of trust or the manner of the collection of any such taxes, and imposing a tax, either directly or indirectly on this Mortgage or the Guaranty, the sums evidenced or secured thereby or the interest payable thereon, Mortgagee shall have the right at any time thereafter, upon not less than twenty (20) days' written notice to Mortgagor to declare the principal sum and interest due in full. If such notice be given, the sums guaranteed by the Guaranty shall become due, payable and collectible at the expiration of such twenty (20) day period or any later date specified therein.
21. Any one of the following events constitutes an event of default under this Mortgage:
- A. Mortgagor fails to pay Mortgagee, when due and in good funds, any payment of principal, interest, fees or expenses required by this Mortgage or the Guaranty.
- B. Mortgagor fails to perform or observe any agreement, covenant or condition required of the Mortgagor under this Mortgage or the Guaranty.

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- C. Any representation or warranty made by the Mortgagor in this Mortgage, or in any certificate or document furnished under the terms of, or in conjunction with, this Mortgage is or becomes untrue in any material respect.
- D. In the event that: (i) Mortgagor applies for or permits the appointment of a receiver, trustee or liquidator of all or a substantial part of that Mortgagor's assets, or (ii) Mortgagor is adjudicated a bankrupt or insolvent, or files a voluntary petition to institute a debtor's proceeding or case, or (iii) Mortgagor admits in writing his inability to pay his debts as they become due, or generally does not pay his debts as they become due, or (iv) Mortgagor makes a general assignment for the benefit of creditors, or (v) Mortgagor files a petition or answer seeking reorganization or arrangement with creditors, or to take advantage of any insolvency law, or (vi) Mortgagor files an answer admitting the material allegations of a petition filed against Mortgagor in any bankruptcy, reorganization or insolvency proceedings, or (vii) Mortgagor fails, for a period exceeding thirty (30) days, to obtain the dismissal of any involuntary case filed against Mortgagor in any bankruptcy, reorganization or insolvency proceedings, or (viii) action is taken by Mortgagor for the purpose of effecting any of the foregoing.
- E. Without the prior written consent of Mortgagee having been first obtained, the Mortgaged Property or the beneficial interest in the Mortgagor or any part thereof or interest therein is sold, exchanged, transferred, conveyed, alienated, subject to contract of sale or leased or demised in a manner not permitted by this Mortgage.
- F. Mortgagor is or is about to become divest of its interest in the Mortgaged Property, or any part thereof or interest therein, whether voluntarily or involuntarily.
- G. The Mortgaged Property is managed by any person or entity other than the holder of the Beneficial Interest in Mortgagor or a person or entity reasonably acceptable to Mortgagee.
- H. Mortgagor commits waste or allows the Mortgaged Property to deteriorate.
- I. Any attempted assignment of the Mortgagor's rights under this Mortgage, notwithstanding the fact that such assignment is null and void and without effect under this Mortgage.
- J. An event of default exists under the Guaranty.
22. Upon the occurrence of an Event of Default, the following provisions shall apply:
- A. All sums secured hereby shall, at the option of Mortgagee, become immediately due and payable without notice, with interest thereon, from the date of the first of any such defaults;
- B. Mortgagee may immediately foreclose this Mortgage. The court in which any proceeding is pending for that purpose may, at once or at any time hereafter, either

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before or after sale, without notice and without requiring bond, and without regard to the solvency or insolvency of any person liable for payment of the indebtedness secured hereby, and without regard to the then value of the Mortgaged Property, or the occupancy thereof as a homestead, appoint a receiver or appoint Mortgagee as a Mortgagee in possession (the provisions for the appointment of a receiver, or Mortgagee as a mortgagee in possession, and assignment of rents being an express condition upon which the financial accommodation secured hereby is made) for the benefit of Mortgagee, with power to collect the rents, issues and profits of the premises, due and to become due, during such foreclosure suit and the full statutory period of redemption, if any, notwithstanding any redemption. The receiver or mortgagee in possession, out of such rents, issues and profits when collected, may pay costs incurred in the management and operation of the premises, prior and subordinate liens, if any, and taxes, assessments, water and other utility charges and insurance, then due or thereafter accruing, and make and pay for any necessary repairs to the premises, and may pay all or any part of the indebtedness secured hereby or any deficiency decree entered in such foreclosure proceedings. The provision herein for the appointment or continuation of the appointment of a receiver or mortgagee in possession during a period of redemption shall not be construed as affecting any waiver of the right of redemption contained in this Mortgage;

- C. Mortgagee shall, at its option, have the right, acting through its agent or attorneys, with process of law, forcibly or otherwise, to enter upon and take possession of the Mortgaged Property, expel and remove any persons, goods or chattels, occupying or upon the same, and to collect or receive all the rents including all those paid by Mortgagor as provided for below, issues and profits thereof, and to manage, control and operate the same, including the right of making all repairs and replacements deemed necessary by Mortgagee, and to lease the same or any part thereof from time to time, and after deducting all reasonable attorneys' fees, and all costs and expenses incurred in the protection, care, maintenance, management and operation of the premises, apply the remaining net income, if any, to the indebtedness secured hereby or upon any deficiency decree entered in any foreclosure proceedings. At the option of Mortgagee, such entry and taking of possession shall be accomplished either by actual entry and possession or by written notice served personally upon or sent by registered mail to Mortgagor at the address of Mortgagor last appearing on the records of Mortgagee. Mortgagor agrees to surrender possession of the Mortgaged Property to Mortgagee immediately upon the occurrence of an Event of Default when requested by Mortgagee. If Mortgagor shall remain in physical possession of the Mortgaged Property, or any part thereof, after any such default, such possession shall be as a tenant at sufferance of Mortgagee, and Mortgagor agrees to pay to Mortgagee, or to any receiver appointed as provided below, after such default, a reasonable monthly rental for the Mortgaged Property, or the part thereof so occupied by Mortgagor, to be applied as provided above in the first sentence of this subsection, and to be paid in advance on the first day of each calendar month, and, in default of so doing, Mortgagor may be dispossessed by the usual summary proceedings. In the event Mortgagor shall so remain in possession of all, or any part of, the Mortgaged Property, said reasonable monthly rental shall be in amounts established by Mortgagee in its sole discretion. This covenant shall be effective

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irrespective of whether any foreclosure of any application for, or appointment of, a receiver; and

- D. Mortgagee may exercise any other remedies or rights permitted or provided under or by the laws or decisions of the state of Illinois (including all rights of a secured party under the Illinois Uniform Commercial Code), accruing to a mortgagee and/or secured party upon a default by a mortgagor and/or debtor, or otherwise available at equity or under the Guaranty.
23. Upon any sale or sales made under or by virtue of paragraph 22, whether made under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, Mortgagee may bid for and, in lieu of paying cash therefor, may make settlement for the purchase price by crediting upon the indebtedness or other sums secured by this Mortgage the net sales price after deducting therefrom the expenses of sale and the costs of the action and other sums which Mortgagee is authorized to deduct under this Mortgage, and, in such event, this Mortgage, the Guaranty and the documents evidencing expenditures secured hereby shall be presented to the person or persons conducting the sale in order that the amount so used or applied may be credited upon said indebtedness as having been paid.
24. Mortgagee, but without obligation so to do and without notice to or demand upon Mortgagor and without releasing Mortgagor from any obligation hereof, may: (i) make or do any payment or act which Mortgagor has failed to make or do hereunder, and to such extent as either may deem necessary to protect the security hereof, Mortgagee being authorized to enter upon the Mortgaged Property for such purposes; (ii) appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Mortgagee; (iii) pay, purchase, contest or compromise any encumbrance charge and lien which in the judgment of Mortgagee either appears to be prior or superior hereto; and (iv) in exercising any such powers, pay necessary expenses, employ counsel and pay his fee. All such sums and expenses so expended by Mortgagee shall be secured by this Mortgage and shall be immediately due and payable without demand or notice, with interest from the date of expenditure at the rate established by Mortgagee.
25. In any foreclosure of this Mortgage, there shall be allowed and included in the decree for sale, to be paid out of the rents or proceeds of such sale:
- A. All principal and interest remaining unpaid and secured hereby;
  - B. All other items advanced or paid by Mortgagee pursuant to this Mortgage, with interest at the interest rate established by Mortgagee from the date of advancement; and
  - C. All court costs, fees of the master in chancery, attorneys' fees, appraisers' fees, expenditures for documentary and expert evidence, stenographer's charges, publication costs, and costs (which may be estimated as to items to be expended after entry of decree) of procuring all abstracts of title, title searches and examinations, title guarantee policies, Torrens certificates and similar data with respect to title which Mortgagee may deem necessary. All such expenses shall become so much additional indebtedness

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STATE OF ILLINOIS, County of Cook, ss. I, Clerk of said County, do hereby certify that the within and foregoing is a true and correct copy of the original as the same appears in the records of said County.

Witness my hand and the seal of said County at Chicago, Illinois, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Clerk of Cook County

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

\_\_\_\_\_  
Recorder of Deeds

\_\_\_\_\_  
Recorder of Mortgages

\_\_\_\_\_  
Recorder of Wills

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Recorder of Probate

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Recorder of Land

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Recorder of Tax

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Recorder of Licenses

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Recorder of Permits

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Recorder of Certificates

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Recorder of Affidavits

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Recorder of Returns

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Recorder of Orders

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Recorder of Resolutions

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Recorder of Minutes

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secured hereby and immediately due and payable with interest at the interest rate established by Mortgagee, when paid or incurred by Mortgagee in connection with any proceedings, including probate and bankruptcy proceedings, to which Mortgagee shall be a party, either as plaintiff, claimant or defendant, by reason of this Mortgage or any indebtedness hereby secured or in connection with preparation for the commencement of any suit for the foreclosure hereof after accrual of such right to foreclose, whether or not actually commenced. The proceeds of any foreclosure sale shall be distributed and applied to the items described in (A), (B), and (C) of this section, inversely to the order of their listing, and any surplus of the proceeds of such sale shall be paid to Mortgagor.

26. A. To the extent permitted by statute, Mortgagor, for itself, its successors and assigns, and for all that it may legally bind who acquire any interest in or title to the Mortgaged Property subsequent to the date hereof, agrees that when sale is had under any decree of foreclosure of this Mortgage, upon confirmation of such sale, the master in chancery, the sheriff, or other officer making such sale, or his successor in office, shall be and is authorized immediately to execute and deliver to the purchaser at such sale, a deed conveying the premises, showing the amount paid therefor, or if purchased by the person in whose favor the order or decree is entered, the amount of his bid therefor.
- B. Mortgagor, on behalf of itself, its successors and assigns, and each and every person it may legally bind acquiring any interest in or title to the Mortgaged Property on or subsequent to the date of this Mortgage: (i) does hereby expressly waive any and all rights of appraisal, valuation, stay and extension under any order or decree of foreclosure of this Mortgage; (ii) does hereby waive any equitable, statutory or other right available to it, in respect to marshaling of assets hereunder, so as to require the separate sales of interests in the Mortgaged Property before proceeding against any other interest in the Mortgaged Property; (iii) does hereby expressly consent to and authorize, at the option of Mortgagee, the sale either separately or together, of any and all interests in the Mortgaged Property; and (iv) does hereby agree that in no event shall Mortgagee be required to allocate any proceeds received by Mortgagee from foreclosure sale or otherwise, to all or any interest in the Mortgaged Property.
27. No remedy or right of Mortgagee shall be exclusive of but shall be in addition to every other remedy or right now or hereafter existing at law or in equity. No delay in the exercise or omission to exercise any remedy or right accruing on any default shall impair any such remedy or right or be construed to be a waiver of any such default, or acquiescence therein, nor shall it affect any subsequent default of the same or a different nature. Every such remedy or right may be exercised concurrently or independently, and when and as often as any be deemed expedient by Mortgagee.
28. Mortgagor will, on request of the Mortgagee, (i) promptly correct any defect, error or omission which may be discovered in the contents of this Mortgage or in any other instrument executed in connection herewith or in the execution or acknowledgement thereof; (ii) execute, acknowledge, deliver and record and/or file such further instruments (including without limitation further deeds of trust, security agreements, financing statements, continuation statements and

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assignments of rents or leases) and do such further acts as may be necessary, desirable or proper to carry out more effectively the purposes of this Mortgage and such other instruments and to subject to the liens and security interest hereof and thereof any property intended by the terms hereof and thereof to be covered hereby and thereby including specifically, but without limitation, any renewals, additions, substitutions, replacements or appurtenances to said property; and (iii) execute, acknowledge, deliver, procure, and file and/or record any document or instrument (including specifically any financing statement) deemed advisable by the Mortgagee to protect the lien of the security interest hereunder against the rights or interest of third persons, and Mortgagor will pay all costs connected with any of the foregoing.

29. The term "Mortgagee" shall mean the owner and holder at any time of the Guaranty, whether or not named as Mortgagee herein. The use of the term "Mortgagor" herein shall not be construed to limit or to otherwise preclude the application of the term "Mortgagor" to the person or persons named herein. The obligations of all persons named as Mortgagor herein shall be joint and several. The provisions hereof shall apply to the parties according to the context thereof, and without regard to the number or gender of words or expressions used.
30. Notwithstanding any provisions herein or in the Guaranty, the total liability for payments in the nature of interest shall not exceed the limits now imposed by the usury laws of the State of Illinois.
31. On transfer or encumbrance of (a) all or any part of the property, or any interest therein, or (b) beneficial interests or ownership interest in Mortgagor (if Mortgagor is not a natural person or persons but is a corporation, partnership, trust or other legal entity), or transfer of control of the operation and management of the property to any person other than Mortgagor then, Mortgagee may, at Mortgagee's option, declare all of the indebtedness secured by this Mortgage to be immediately due and payable and invoke any remedies permitted by this Mortgage or the Guaranty, all without prior notice to Mortgagor. This option shall not apply in case of (a) transfers by devise or descent or by the operation of law upon the death of a joint tenant; (b) transfers by reason of the replacement of fixtures, equipment, machinery and appliances; and (c) transfers or encumbrances previously approved in writing by Mortgagee in its sole discretion.
32. That Mortgagor will comply with the requirements of all Federal, State and Local pollution laws and regulations applicable or pertaining to the operation of the Mortgaged Property.
33. Mortgagor represents and agrees that the indebtedness guaranteed by the Guaranty will be used for the purposes specified in Section 4(1)(c) of Paragraph 6404 of Chapter 17 of the Illinois Revised Statutes, as amended, and that the debt secured hereby constitutes a business loan which comes within the purview of said paragraph.
34. Mortgagor shall not and will not apply for or avail itself of any appraisal, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws", now existing or hereafter enacted, in order to prevent or hinder the enforcement of 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 Mortgaged

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Property marshalled upon any foreclosure of the lien hereof, and agrees that any court having jurisdiction to foreclose such lien may order the Mortgaged property sold as an entirety.

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

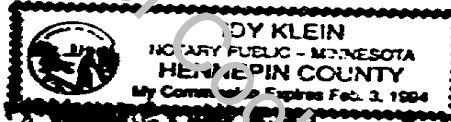
WINTZ PROPERTIES, INC.  
(A Minnesota Corporation)

By: *George L. Wintz*  
Its: *Pres*

STATE OF MINNESOTA )  
                                  ) SS.  
COUNTY OF HENNEPIN )

The foregoing instrument was acknowledged before me this 21st day of December, 1993 by GEORGE L. WINTZ, the President of Wintz Properties, Inc., a Minnesota corporation, on behalf of said corporation.

(NOTARIAL SEAL)



*Jody Klein*  
Notary Public

COUNTY CLERK'S  
FILED FOR RECORD

1993 DEC 29 PM 2:34

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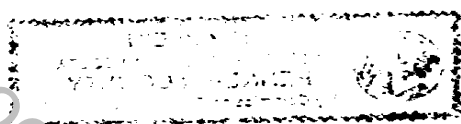
OFFICE OF THE CLERK OF COOK COUNTY  
110 NORTH DEARBORN STREET, CHICAGO, ILLINOIS 60602

RECEIVED  
JAN 15 1998

CLERK OF COOK COUNTY  
110 NORTH DEARBORN STREET, CHICAGO, ILLINOIS 60602

CLERK OF COOK COUNTY  
110 NORTH DEARBORN STREET, CHICAGO, ILLINOIS 60602

CLERK OF COOK COUNTY  
110 NORTH DEARBORN STREET, CHICAGO, ILLINOIS 60602



CLERK OF COOK COUNTY  
110 NORTH DEARBORN STREET, CHICAGO, ILLINOIS 60602

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## EXHIBIT A

### PARCEL 1:

LOTS 26, 27, 28, 29, 30, 31, 32, 33, 34 AND A PART OF LOT 35 IN J. P. WILLARDS SUBDIVISION OF THE WEST 1/2 OF BLOCK 5, LOTS 17 TO 22 INCLUSIVE, LOT 34 AND PART OF LOTS 16 AND 35 OF HERRICK STEVENS SUBDIVISION OF THE EAST 1/2 OF BLOCK 5, LOTS 1, 2, 4, 5, AND 6 IN THE RESUBDIVISION OF PART OF THE EAST 1/2 OF BLOCK 5 TOGETHER WITH VACATED STREET AND ALLEY LYING BETWEEN SAID LOTS ALL IN CANAL TRUSTEES SUBDIVISION OF THE EAST 1/2 OF SECTION 31, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT OF INTERSECTION OF THE EAST LINE OF THE ALLEY IN J. P. WILLARD'S SUBDIVISION OF THE WEST 1/2 OF BLOCK 5 IN CANAL TRUSTEES SUBDIVISION OF THE EAST 1/2 OF SECTION 31, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, WITH THE NORTH LINE OF WEST 33RD STREET; THENCE NORTH ALONG THE EAST LINE OF SAID ALLEY, A DISTANCE OF 250 FEET; THENCE EAST ALONG A LINE PARALLEL TO THE NORTH LINE OF WEST 33RD STREET, A DISTANCE OF 459.06 FEET TO THE WEST LINE OF SOUTH WOLCOTT STREET; THENCE SOUTH ALONG THE WEST LINE OF SOUTH WOLCOTT STREET 61.07 FEET TO AN ANGLE IN SAID STREET; THENCE SOUTHWESTERLY ALONG THE NORTHWESTERLY LINE OF SAID SOUTH WOLCOTT STREET, A DISTANCE OF 284.69 FEET TO THE NORTH LINE OF WEST 33RD STREET; THENCE WEST ALONG THE NORTH LINE OF WEST 33RD STREET, A DISTANCE 244.20 TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

### PARCEL 2:

LOTS 14 TO 25, BOTH INCLUSIVE, IN WILLARD'S SUBDIVISION OF THE WEST 1/2 OF BLOCK 5 IN CANAL TRUSTEES SUBDIVISION IN THE EAST 1/2 OF SECTION 31, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

### PARCEL 3:

LOTS 1 TO 13, INCLUSIVE TAKEN AS A TRACT, EXCEPTING FROM SAID TRACT THE NORTH 33 FEET THEREOF IN J. P. WILLARD'S SUBDIVISION OF THE WEST 1/2 OF BLOCK 5 IN CANAL TRUSTEES SUBDIVISION OF THE EAST 1/2 OF SECTION 31, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

### PARCEL 4:

A PARCEL OF LAND COMPRISING ALL OF LOTS 35 TO 42, INCLUSIVE TOGETHER WITH PARTS OF LOTS 35 AND 43, ALL IN J. P. WILLARD'S SUBDIVISION OF THE WEST 1/2 OF BLOCK 5; ALSO ALL OF LOTS 9 TO 15 INCLUSIVE, ALL OF LOTS 36 TO 42 INCLUSIVE, TOGETHER WITH PART OF LOTS 8, 16, 35 AND 43, ALL IN HERRICK STEVENS SUBDIVISION OF THE EAST 1/2 OF SAID BLOCK 5; ALSO THAT PART OF THE VACATED STREET AND VACATED ALLEY LYING BETWEEN SAID LOTS AND PARTS THEREOF, ALL IN CANAL TRUSTEES SUBDIVISION OF THE EAST 1/2 OF SECTION 31, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, WHICH PARCEL OF LAND IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

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BEGINNING AT THE POINT OF INTERSECTION OF THE EAST LINE OF THE ALLEY IN SAID J. P. WILLARD'S SUBDIVISION WITH A LINE 250 FEET NORTH OF AND PARALLEL TO THE NORTH LINE OF WEST 33RD STREET, AND RUNNING THENCE NORTH ALONG SAID EAST LINE OF ALLEY, A DISTANCE OF 200 FEET TO ITS INTERSECTION WITH A LINE 450 FEET NORTH OF AND PARALLEL TO SAID NORTH LINE OF WEST 33RD STREET; THENCE EAST ALONG THE LAST ABOVE MENTIONED PARALLEL LINE A DISTANCE OF 459.06 FEET TO THE WEST LINE OF SOUTH WOLCOTT STREET; THENCE SOUTH ALONG SAID WEST LINE OF SOUTH WOLCOTT STREET, A DISTANCE OF 200 FEET TO ITS INTERSECTION WITH THE LAST MENTIONED PARALLEL LINE IN THIS DESCRIPTION; AND THENCE WEST ALONG THE PARALLEL LINE A DISTANCE OF 459.06 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

## PARCEL 5A:

A PARCEL OF LAND COMPRISING LOTS 6, 7, 44, AND 45 AND PARTS OF LOTS 5, 8, 43, AND 46 AND PART OF VACATED ALLEY ADJOINING SAID LOTS, IN HERRICK STEVENS SUBDIVISION OF THE EAST 1/2 OF BLOCK 5 AND ALL OF LOTS 44 AND 45, AND PARTS OF LOTS 43, 46, 47, 48, 49, AND 50 IN WILLARDS SUBDIVISION OF THE WEST 1/2 OF BLOCK 5, TOGETHER WITH PARTS OF VACATED WINCHESTER AVENUE AND OF VACATED WEST 32ND STREET, ALL IN CANAL TRUSTEES SUBDIVISION OF THE EAST 1/2 OF SECTION 31, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, WHICH PARCEL OF LAND IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

A STRIP OF LAND 66 FEET IN WIDTH, THE SOUTH LINE THEREOF BEING A LINE 450 FEET NORTH OF AND PARALLEL TO THE NORTH LINE OF WEST 33RD STREET, SAID STRIP BEING BOUNDED ON THE EAST BY SOUTH WOLCOTT STREET AND ON THE WEST BY THE 15 FOOT ALLEY RUNNING NORTH AND SOUTH THROUGH WILLARD'S SUBDIVISION OF BLOCK 5 AFORESAID, (EXCEPTING FROM THE AFORESAID STRIP OF LAND THE NORTH 1/2 OF THE EAST 250.00 FEET THEREOF).

## PARCEL 5B

A PERPETUAL NON EXCLUSIVE EASMENT FOR INGRESS AND EGRESS OVER THE FOLLOWING LAND: THE NORTH 1/2 OF OF THE EAST 250.00 FEET OF THE FOLLOWING DESCRIBED REAL ESTATE IN COOK COUNTY, ILLINOIS: A PARCEL OF LAND COMPRISING LOTS 6, 7, 44, AND 45 AND PARTS OF LOTS 5, 8, 43, AND 46 AND PART OF VACATED ALLEY ADJOINING SAID LOTS IN HERRICK STEVEN'S SUBDIVISION OF THE EAST 1/2 OF BLOCK 5 AND ALL OF LOTS 44 AND 45, AND PARTS OF LOTS 43, 46, 47, 48, 49 AND 50 IN WILLARDS SUBDIVISION OF THE WEST 1/2 OF BLOCK 5 TOGETHER WITH PARTS OF VACATED WINCHESTER AVENUE AND OF VACATED WEST 32ND STREET, ALL IN CANAL TRUSTEES SUBDIVISION OF THE THE EAST 1/2 OF SECTION 31, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, WHICH PARCEL OF LAND IS MORE PARTICULARLY DESCRIBED AS FOLLOWS: A STRIP OF LAND 66.00 FEET IN WIDTH THE SOUTH LINE THEREOF BEING A LINE 450 FEET NORTH OF AND PARALLEL TO THE NORTH LINE OF WEST 33RD STREET, SAID STRIP BEING BOUNDED ON THE EAST BY SOUTH WOLCOTT STREET AND ON THE WEST BY THE 15 FOOT ALLEY RUNNING NORTH AND SOUTH THROUGH WILLARD'S SUBDIVISION OF BLOCK 5 AFORESAID.

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**EXCEPTIONS FROM COVERAGE**

~~THIS POLICY DOES NOT COVER LOSS OR DAMAGE TO THE PROPERTY AND~~  
~~CONTENTS THEREOF BY THE COVERED PERILS, INCLUDING THE FOLLOWING~~  
~~FOLLOWING PERILS:~~

**GENERAL EXCEPTIONS:**

- ~~1. RIGHTS OF TITLE OR PARTIAL INTERESTS IN POSSESSION NOT OWNED BY PUBLIC BODIES.~~
- ~~2. ENCROACHMENTS, OVERLAPS, EASEMENTS, EJECTMENT, OR OTHER DEFECTS WHICH~~  
~~WOULD BE DETECTED BY REASONABLE SURVEY AND INSPECTION OF THE PREMISES.~~
- ~~3. EASEMENTS OR CLAIMS OF EJECTMENT, NOT OWNED BY THE ASSURED.~~
- ~~4. LOSS BY OR THROUGH THE WORKMANSHIP, LABOR, OR MATERIALS USED IN THE~~  
~~CONSTRUCTION, REPAIR, OR MAINTENANCE OF THE PROPERTY.~~
- ~~5. DEFECTS IN THE TITLE OR INTERESTS IN THE PROPERTY.~~

**4. TAXES FOR THE YEARS 1992 AND 1993.**

NOTE: 1992 FINAL INSTALLMENT NOT DELINQUENT BEFORE AUGUST 2, 1993.  
 NOTE: 1993 TAXES NOT DELINQUENT BEFORE MARCH 1, 1994.  
 NOTE: THE AMOUNT OF THE 1992 FIRST ESTIMATED INSTALLMENT HAS BEEN DEPOSITED  
 WITH THE COUNTY COLLECTOR.

PERMANENT TAX NOS. 17-31-207-030, 17-31-208-015, 17-31-207-036,  
 17-31-207-029, 17-31-207-037, 17-31-208-008, 17-31-208-009, 17-31-207-039,  
 AND 17-31-208-017.

**2. RIGHTS OF PUBLIC AND QUASI-PUBLIC UTILITIES IN SAID VACATED STREET AND  
 ALLEY FOR MAINTENANCE THEREIN OF POLES AND CONDUITS BY REASON OF A 6 INCH  
 WATER MAIN RUNNING NORTH AND SOUTH LOCATED 26 FEET EAST OF THE WEST LINE OF  
 VACATED WINCHESTER AVENUE AND BY REASON OF POLES, ANCHORS AND AERIAL CABLES  
 OF THE ILLINOIS BELL TELEPHONE COMPANY IN THE NORTH AND SOUTH VACATED ALLEY  
 BETWEEN VACATED SOUTH WINCHESTER AVENUE AND SOUTH WOLCOTT AVENUE.**

(AFFECTS PARCELS 1, 4, AND 5)

**3. COVENANTS, CONDITIONS AND RESTRICTIONS CONTAINED IN THE WARRANTY DEED DATED  
 DECEMBER 1, 1959 AND RECORDED DECEMBER 19, 1959 AS DOCUMENT 17744954 FROM  
 DARLING AND COMPANY TO FREIGHT DISTRIBUTORS INC THAT THE LAND WILL NOT BE  
 USED FOR A GENERAL RENDERING BUSINESS OR FOR THE PURPOSE OF STORING,  
 HANDLING OR CURING HIDES, SKINS, TALLOW, CRACKLING OR FOR THE SELLING,  
 HANDLING OR OTHERWISE DEALING IN ANY PRODUCT OR PROPERTY WHICH IS THE  
 RESULT OF SAID BUSINESS OR FOR THE PURPOSE OF GIVING INGRESS AND EGRESS BY  
 RAIL OR OTHERWISE TO ANY RENDERING PLANT OR COMPANY OR OWNER THEREOF.**

~~THIS POLICY DOES NOT COVER LOSS OR DAMAGE TO THE PROPERTY OR~~  
~~CONTENTS THEREOF BY THE COVERED PERILS, INCLUDING THE FOLLOWING~~  
~~FOLLOWING PERILS:~~

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**SCHEDULE B**

**ENCUMBRANCES**  
**(CONTINUED)**

(AFFECTS PARCEL 2)

- 4. (A) RIGHTS OF THE MUNICIPALITY, STATE OF ILLINOIS, THE PUBLIC AND ADJOINING OWNERS IN AND TO VACATED ALLEY AND OF WINCHESTER STREET;
- (B) RIGHTS OF THE PUBLIC OR QUASI-PUBLIC UTILITIES, IF ANY, IN SAID VACATED ALLEY AND OF WINCHESTER STREET FOR MAINTENANCE THEREIN OF POLES, CONDUITS, SEWERS, ETC.

(AFFECTS PARCEL 5)

- 5. ENCROACHMENT OF STEEL FENCE AND CONCRETE APRON OVER NORTH LINE OF PARCEL 5 AS SHOWN ON PLAT OF SURVEY DATED APRIL 13, 1951.
- 6. EASEMENT FOR INGRESS AND EGRESS OVER AND UPON PART OF PARCEL 5A AS CREATED BY MUTUAL EASEMENT AGREEMENT BETWEEN THE O. K. TRUCKING COMPANY AND TRUSTEES UNDER THE AGREEMENT DATED NOVEMBER 20, 1961 ALSO KNOWN AS THE CHICAGO KANSAS CITY FREIGHT LINES INC EMPLOYEES PROFIT SHARING TRUST DATED JANUARY 25, 1972 AND RECORDED MARCH 14, 1972 AS DOCUMENT 21835729.

(AFFECTS THE SOUTH 1/2 OF THE EAST 250 FEET OF A STRIP OF LAND 66 FEET IN WIDTH LYING IN THE FOLLOWING DESCRIBED TRACT OF LAND: LOTS 5 TO 8, BOTH INCLUSIVE LOTS 43 TO 46, BOTH INCLUSIVE AND THE 15 FOOT NORTH AND SOUTH ALLEY VACATED PER DOCUMENT 11127078, WEST OF AND ADJOINING THE WEST LINE OF THE AFORESAID LOTS 43 TO 46, ALL IN HERRICK STEVENS SUBDIVISION OF THE EAST 1/2 OF BLOCK 5 IN COURTS SUBDIVISION OF THE EAST 1/2 OF SECTION 31, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, THE SOUTH LINE OF THE AFORESAID STRIP OF LAND BEING A LINE DRAWN 450.00 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF LOTS 25 AND 26 IN THE AFORESAID HERRICK STEVENS' SUBDIVISION SAID SOUTH LINE OF LOTS 25 AND 26 BEING ALSO THE NORTH LOT OF WEST 33RD STREET, THE EAST LIMIT OF THE AFORESAID STRIP OF LAND BEING THE EAST LINE OF THE AFORESAID LOTS 43 AND 46, ALL IN COOK COUNTY, ILLINOIS.)

- 7. RIGHTS OF THE PUBLIC AND QUASI-PUBLIC UTILITIES, IF ANY, IN THE LAND WITH RESPECT TO UNRECORDED EASEMENTS.
- 8. THE RECORDING OF ANY DEED OR OTHER INSTRUMENT OF CONVEYANCE OF THE LAND, OR ASSIGNMENT OF THE BENEFICIAL INTEREST UNDER A LAND TRUST, THE TRANSFER OF REAL ESTATE BY SALE OF PARTNERSHIP INTERESTS, SALE OF STOCK IN A CORPORATION OR SIMILAR METHODS, OR TRANSFER OF A LEASEHOLD INTEREST UNDER A LEASE WHICH PROVIDES FOR A TERM OF 30 OR MORE YEARS, CONSIDERING ANY OPTIONS TO RENEW OR EXTEND WHETHER OR NOT ANY PORTION OF THE TERM HAS EXPIRED, MAY BE SUBJECT TO REAL ESTATE TRANSFER TAXES LEVIED BY THE CITY OF CHICAGO AND IS SUBJECT TO:

- (1) PRIOR APPROVAL BY THE WATER COMMISSIONER AND
- (2) EITHER CERTIFICATION OF EXEMPTION FROM THE CITY BUILDING

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~~UNDISCLOSED EASEMENTS~~  
(CONTINUED)

REGISTRATION ORDINANCE OR ATTACHMENT OF EITHER A CERTIFICATION OF REGISTRATION OR A RECEIPT FROM THE DEPARTMENT OF BUILDINGS SHOWING THAT THE BUILDING HAS BEEN REGISTERED BY THE PURCHASER. IN THE ABSENCE OF SUCH APPROVAL, THE RECORDER OF DEEDS IS REQUIRED BY STATE LAW TO REFUSE TO RECORD OR REGISTER INSTRUMENTS OF CONVEYANCE THAT ARE NOT IN COMPLIANCE WITH SUCH TAX REQUIREMENTS.

9. FOREIGN TRANSCRIPT OF JUDGMENT ENTERED IN:

CASE NUMBER: 9106997  
COURT: CIRCUIT  
COUNTY: HAMILTON COUNTY, OHIO  
RECORDED: FEBRUARY 19, 1992  
DOCUMENT NUMBER: 92104489  
IN FAVOR OF: BRUCE A. COCK INC., DBA COOK TRANE SERVICE AGENCY  
AGAINST: OK TRUCKING COMPANY  
AMOUNT: \$13,948.04

10. ENCROACHMENTS AS DISCLOSED BY SURVEY MADE BY CHICAGOLAND SURVEY COMPANY DATED JULY 6, 1992 AS FILE NO. 52-44:

- A) GATE OVER 15 FOOT WIDE PUBLIC ALLEY FOR A DISTANCE OF 15 FEET BETWEEN PARCELS 1 AND 2.
- B) FENCE OVER 15 FOOT WIDE PUBLIC ALLEY FOR A DISTANCE OF ABOUT 100 FEET BETWEEN PARCELS 3, AND 5A
- C) CONCRETE WALKS OVER 15 FOOT WIDE PUBLIC ALLEY FOR A DISTANCE OF 15 FEET BETWEEN PARCELS 3, 4, AND 5A.
- D) OVERHUNG CONCRETE WALL WITH LIGHT POLES OVER THE WEST LINE OF PARCELS 2 AND 3 BY UNDISCLOSED AMOUNTS.
- E) DRIVEWAY LOCATED MAINLY ON PARCELS 5A AND 5B OVER AND ONTO PROPERTY NORTH AND ADJOINING BY AN UNDISCLOSED AMOUNT.
- F) FENCE LOCATED MAINLY ON THE LAND OVER THE SOUTHEAST CORNER OF PARCEL 1 BY AN UNDISCLOSED AMOUNT FOR A DISTANCE OF 284 FEET.

11. RIGHTS OF THE PUBLIC OR QUASI PUBLIC UTILITIES, IF ANY, IN EASEMENT RECORDED AS DOCUMENT 14468202 AND ABROGATED BY INSTRUMENT RECORDED AS DOCUMENT 21835726 FOR MAINTENANCE THEREIN OF POLES, CONDUITS, SEWERS, ETC.

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(CONTINUED)

(AFFECTS PARCEL 5B)

- 12.** RIGHTS OF THE PUBLIC OR QUASI-PUBLIC UTILITIES, IF ANY, IN SAID VACATED WEST 32ND STREET FOR MAINTENANCE THEREIN OF POLES, CONDUITS, SEWERS, ETC.
- 13.** JUDGMENT ENTERED IN CASE 92UC2319 IN UNITED STATES DISTRICT COURT ON JUNE 16, 1992 IN FAVOR OF LOCAL 710 HEALTH, WELFARE AND PENSION FUNDS IN THE AMOUNT OF \$71,937.30 AND AGAINST OK TRUCKING COMPANY, AN OHIO CORPORATION, NOTICE FILED NOVEMBER 13, 1992 AS DOCUMENT 92851742.
- 14.** (A) TERMS, PROVISIONS, AND CONDITIONS RELATING TO THE EASEMENT DESCRIBED AS PARCEL 6 CONTAINED IN THE INSTRUMENT CREATING SAID EASEMENT.
- (B) RIGHTS OF THE ADJOINING OWNER OR OWNERS TO THE CONCURRENT USE OF SAID EASEMENT.

~~IF YOU ARE PROVIDING THIS INFORMATION TO ANY OTHER PARTY, YOU AGREE TO HOLD THEM HARMLESS FROM ANY AND ALL LIABILITY.~~

~~THE FOLLOWING ENVIRONMENTAL RECORD INFORMATION IS BEING PROVIDED TO YOU FOR YOUR INFORMATION AND IS NOT TO BE USED FOR ANY OTHER PURPOSE. THIS INFORMATION IS NOT TO BE USED FOR ANY OTHER PURPOSE.~~

~~FOR MORE INFORMATION, CONTACT THE CLERK OF COURT AT 100 N. LAUREL STREET, CHICAGO, ILL. 60602.~~

- 15.** MECHANICS' LIEN CLAIM:

BY: PROFESSIONAL TANK SERVICES LTD.  
AGAINST: OK TRUCKING COMPANY  
RECORDED: APRIL 8, 1993  
DOCUMENT NUMBER: 93262236 AND RE-RECORDED APRIL 12, 1993 AS DOCUMENT 93267320  
AMOUNT: \$13,198.41

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## CORPORATE GUARANTY AGREEMENT

THIS CORPORATE GUARANTY AGREEMENT, made and entered into as of December 21, 1993 (the "Guaranty"), by WINTZ PROPERTIES, INC., a Minnesota corporation, as Guarantor ("Guarantor"), for the benefit of COMMERCIAL STATE BANK OF MINNESOTA ("Commercial") in St. Paul, Minnesota, and FARMERS AND MERCHANTS STATE BANK OF NEW ULM ("Farmers"), in New Ulm, Minnesota (Commercial and Farmers are collectively referred to herein as "Lenders").

### WITNESSETH:

**PRELIMINARY STATEMENT:** O.K. Freightways, Inc. is obligated to Farmers under a promissory note in the principal amount of \$4,803,866.73 of even date herewith and Wintz Companies is obligated to Commercial under a promissory note in the principal amount of \$3,319,880.27 of even date herewith (collectively the "Notes"). It is a condition precedent to acceptance of the Notes by Lenders that Guarantor shall have executed and delivered this Guaranty. O.K. Freightways, Inc. and Wintz Companies are sometimes collectively referred to herein as "Borrowers".

NOW, THEREFORE, in consideration of the premises Guarantor hereby agrees as follows:

**SECTION 1. Guaranty.** Guarantor hereby unconditionally guarantees the punctual payment and performance when due, whether at stated maturity, by acceleration or otherwise, of all obligations of Borrowers to Lenders now or hereafter existing under the Notes, or any other document or otherwise, including any mortgages, security agreements, deeds of trust or other documents executed by Borrowers, or either of them, in favor of Lenders or either of them (the "Loan Documents"), whether for principal, interest, fees, expenses or otherwise and of all debts, liabilities and obligations of every type and description which either of the Borrowers may now or at any time hereafter owe to either or both Lenders (such debts, liabilities and obligations being hereafter collectively referred to as the "Obligations"), and agrees to pay any and all expenses incurred by either of the Lenders in enforcing any rights under this Guaranty.

**SECTION 2. Guaranty Absolute.** Guarantor unconditionally guarantees that the Obligations will be paid strictly in accordance with the terms of the Notes and the Loan Documents, regardless of any law, regulation or order now or hereafter in effect in any jurisdiction affecting any of such terms or the rights of Lenders with respect thereto. The liability of Guarantor under this Guaranty shall be absolute and unconditional irrespective of:

- (i) any lack of validity or enforceability of either of the Notes, the Loan Documents, or any other agreement or instrument relating thereto;
- (ii) any change in the time, manner or place of payment of, or in any other term of, all or any of the Obligations or any other amendment or waiver of or any consent to departure from either of the Notes, the Loan Documents, or any other agreement or instrument relating thereto;

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Exhibit C

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1475 South Dearborn Street, Chicago, IL 60606

INVESTIGATION REPORT

On this day, I, the undersigned, being duly sworn, depose and say that the following information was obtained from a confidential source who has provided reliable information in the past:

1. Name of Source

2. Name of Subject

3. Name of Agency

4. Name of Employer

5. Name of Address

6. Name of Telephone

7. Name of Other Information

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- (iii) any exchange, release or non-perfection of any collateral or any release or amendment or waiver of or consent to departure from any other guaranty, for all or any of the Obligations; or
- (iv) any other circumstance which might otherwise constitute a defense available to, or a discharge of, Borrower in respect of the Obligations or Guarantor in respect of this Guaranty.

This Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any of the Obligations is rescinded or must otherwise be returned by Lenders upon the insolvency, bankruptcy or reorganization of Borrower or otherwise, all as though such payment had not been made.

**SECTION 3. Waiver.** Guarantor hereby waives promptness, diligence, notice of acceptance and any other notice with respect to any of the Obligations and this Guaranty and any requirement that Lenders protect, secure, perfect or insure any security interest or lien or any property subject thereto or exhaust any right or take any action against Borrower or any other person or entity, including, without limitation, any other guarantor or any collateral.

**SECTION 4. Subrogation.** Guarantor waives any rights which Guarantor may now have or hereafter acquire, whether by subrogation, reimbursement, or otherwise, to recover from either of the Borrowers or from any property of either of the Borrowers, any sums paid under this Guaranty.

**SECTION 5. Representations and Warranties.** Guarantor hereby represents and warrants that: (a) it has full power and authority to enter into and perform its obligations under this Guaranty; (b) this Guaranty has been duly and validly executed and delivered by Guarantor and constitutes a valid and enforceable obligation of Guarantor; (c) to the best of Guarantor's knowledge, the execution and delivery and compliance with the terms hereof shall not contravene or constitute a default under any indenture, commitment, agreement or other instrument to which he is bound or any judgment, order or decree to which it is subject; (d) to the best of Guarantor's knowledge, there is no suit, action, proceeding or investigation pending or threatened against or affecting Guarantor (or any basis therefor) at law or in equity or by or before any court, arbitrator, administrative agency or other federal, state or local governmental authority which individually or in the aggregate, if adversely determined, might have a material adverse effect on Guarantor's ability to perform, or affect the validity as to Guarantor of, the obligations of Guarantor hereunder or as contemplated hereby; (e) information, including, but not limited to, financial information provided by Guarantor to Lenders, is true and correct and does not state any untrue fact or fail to state any material fact necessary to reflect the financial condition of Guarantor as of the date given and the date hereof; (f) the provision of financial accommodation by Lenders to Borrowers and the guaranty of payment of the Obligations under this Guaranty will result in a direct financial benefit to Guarantor; and (g) Guarantor has read and approved the terms of the Note and the Loan Documents.

**SECTION 6. Amendments, Etc.** No amendment or waiver of any provision of this Guaranty nor consent to any departure by Guarantor herefrom shall in any event be effective unless the same shall be in writing and signed by Lenders, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

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INVESTIGATION REPORT

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**SECTION 7. Addresses for Notices.** All notices and other communications provided for hereunder shall be in writing (including telegraphic communication) and, if to Guarantor, mailed or telegraphed or delivered to Guarantor, addressed to Guarantor, at the address specified on the signature page hereunder, if to Lenders, mailed or delivered to it, addressed to it at the address of Lenders specified on the signature page hereof, or as to each party at such other address as shall be designated by such party in a written notice to the other party. All such notices and other communications shall, when mailed or telegraphed, respectively, be effective when deposited in the mails or delivered to the telegraph company, respectively, addressed as aforesaid.

**SECTION 8. No Waiver Remedies.** No failure on the part of Lenders to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

**SECTION 9. Right of Setoff.**

- (a) Upon the occurrence and during the continuance of any default under either of the Notes or any Loan Document or under this Guaranty, Lenders is hereby authorized at any time and from time to time, without notice to Guarantor (any such notice being expressly waived by Guarantor) and to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other indebtedness at any time owing by Lenders to or for the credit or the account of Guarantor against any and all of the obligations of Guarantor now or hereafter existing under this Guaranty irrespective of whether or not Lenders shall have made any demand hereunder and although such obligations may be unmatured.
- (b) Lenders agrees to notify Guarantor immediately upon such set-off and application, provided that the failure to give such notice shall not affect the validity of such set-off and application. Subject as aforesaid, the rights of Lenders under this Section are in addition to other rights and remedies (including, without limitation, other rights of set-off) which Lenders may have.

**SECTION 10. Continuing Guaranty.** This Guaranty is a continuing guaranty and shall: (i) remain in full force and effect until payment in full of the Obligations and all other amounts payable under this Guaranty (but shall be subject to reinstatement in the circumstances described in the last sentence of Section 2 hereof), (ii) be binding upon Guarantor and its successors and assigns, and (iii) inure to the benefit of and be enforceable by Lenders and its successors, transferees and assigns.

**SECTION 11. Governing Law; Severability.** This Guaranty shall be governed by, and construed in accordance with, the laws of the State of Minnesota. If any provision of this Guaranty shall be held to be invalid by any court of competent jurisdiction, the invalidity of such provision shall not affect any of the remaining provisions.

**SECTION 12. Jurisdiction.** Guarantor hereby irrevocably agrees that any legal action or proceedings against him with respect to this Guaranty may be brought in the courts of the State of Minnesota, or in any United States District Court in the State of Minnesota, and by the execution and delivery of this

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Guaranty, Guarantor hereby irrevocably submits to the jurisdiction of each such court and hereby irrevocably waives any and all objections that Guarantor may have as to jurisdiction or venue in any of such courts. Guarantor acknowledges that he has received sufficient consideration for any inconvenience which may be caused by any legal action brought in the State of Minnesota, and agrees that the enforcement of this Section 12 against Guarantor would not be unreasonable or unfair under all the circumstances of this Guaranty.

**SECTION 13. Counterparts.** This Guaranty may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**SECTION 14. Collateral.** Performance by Guarantor of the terms, covenants, and conditions of this Guaranty is secured by a mortgage, assignment of rents and security agreement on property located in Wisconsin, a mortgage and security agreement on property located in Illinois, two open-end mortgage and security agreements on property located in Ohio, three deed of trust and security agreements on property located in Missouri, and a mortgage, assignment of rents, leases and profits and security agreement on property located in Indiana (the "Mortgages") and by separate assignments of leases, rents, profits and contracts corresponding to each of the Mortgages (the "Assignments"). Any default under any of the Mortgages or Assignments shall also be a default under this Guaranty. Any default under the Guaranty shall also be a default under the Mortgages and the Assignments entitling Lenders to exercise their rights and remedies under the Mortgages and Assignments.

IN WITNESS WHEREOF, Guarantor has caused this Guaranty to be duly executed and delivered as of the date first above written.

WINTZ PROPERTIES, INC.  
(A Minnesota Corporation)

By: *George J. Wintz*

Its: *Pres.*

Address: 2323 Terminal Road  
St. Paul, Minnesota 55113

Commercial State Bank of Minnesota  
2000 Minnesota World Trade Center  
30 East 7th Street  
St. Paul, Minnesota 55101  
Attn: Richard Kastner

Farmers and Merchants State Bank of New Ulm  
322 North Minnesota Street  
P.O. Box 757  
New Ulm, MN 56073  
Attn: John Wisniewski

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When Faxed to: 708.411.7500  
CHICAGO TELETYPE UNIT  
222 South Kinzie Street, 4th Floor  
Chicago, Illinois 60610  
Minneapolis, Minnesota 55402

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*[Faint, mostly illegible text, likely a document header or footer with contact information and possibly a date.]*