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COOK COUNTY  
RECORDER  
IMPRINT  
CORRECTION  
08 YR. IS 1998

: DEPT-01 RECORDING 9804 \$51.00  
: T#0000 TRAN 0935 11/10/98 10:59:00  
: #2793 # CG #-08-013637  
: COOK COUNTY RECORDER

(2) of (2) 1016626

MORTGAGE

THIS MORTGAGE is made as of the 2nd day of November, 1998, by MILTON PINSKY and ELIZABETH PINSKY (jointly, "Borrower"), to and for the benefit of LASALLE NATIONAL BANK, a national banking association ("Lender");

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RECITALS:

A. Lender has agreed to loan to Borrower the principal amount of \$535,000.00 (the "Loan"). The Loan shall be evidenced by a certain Promissory Note of even date herewith (the "Note") made by Borrower payable to Lender.

B. A condition precedent to Lender's extension of the Loan to Borrower is the execution and delivery by Borrower of this Mortgage.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower agrees as follows:

Borrower hereby mortgages, grants, assigns, remises, releases, warrants and conveys to Lender, its successors and assigns, the real estate legally described on Exhibit A attached hereto (the "Real Estate"), including all rights, interests and privileges appertaining to land beneath the surface and all air rights to space above the surface, together with the other property described in the following paragraph (the Real Estate and such other property being hereinafter referred to as the "Premises") to secure: (i) the payment of the Loan and all interest, late charges and other indebtedness evidenced by or owing under the Note and by any extensions, modifications,

This instrument was prepared by and, after recording, return to:

Permanent Real Estate Tax Index No.:  
05-05-100-004

Schwartz, Cooper, Greenberger & Krauss  
180 North LaSalle Street, Suite 2700  
Chicago, Illinois 60601  
Attn: Benjamin J. Bass

Common Address:  
727 Longwood  
Glencoe, Illinois 60022

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GENERAL TITLE INCORPORATED

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renewals or refinancings thereof; (ii) the performance and observance of the covenants, conditions, agreements, representations, warranties and other liabilities and obligations of Borrower or any other obligor to or benefitting Lender which are evidenced or secured by or otherwise provided in the Note or this Mortgage; and (iii) the reimbursement of Lender for any and all sums expended or advanced by Lender pursuant to any term or provision of or constituting additional indebtedness under or secured by this Mortgage, with interest thereon as provided herein or therein.

In addition to the Real Estate, the Premises hereby mortgaged includes all buildings, structures and improvements now or hereafter constructed or erected upon or located on or under the Real Estate, all tenements, easements, rights-of-way and rights used as a means of access thereto, all fixtures and appurtenances thereto now or hereafter belonging or pertaining to the Real Estate, and all rents, issues, royalties, income, revenue, proceeds, profits, security deposits and all accounts relating to the Premises and all other benefits thereof, and any after-acquired title, franchise, or license and the reversions or remainders thereof, for so long and during all such times as Borrower may be entitled thereto (which are pledged primarily and on a parity with said Real Estate and not secondarily). All of the land, estate and property hereinabove described, real, personal and mixed, whether or not affixed or annexed, and all rights hereby conveyed and mortgaged are intended so to be as a unit and are hereby understood, agreed and declared, to the maximum extent permitted by law, to form a part and parcel of the Real Estate and to be appropriated to the use of the Real Estate, and shall be for the purposes of this Mortgage deemed to be conveyed and mortgaged hereby.

TO HAVE AND TO HOLD the Premises unto Lender, its successors and assigns, forever, for the purposes and uses herein set forth, together with all right to retain possession of the Premises after any Event of Default (as hereinafter defined).

## IT IS FURTHER UNDERSTOOD AND AGREED THAT:

1. **Title.** Borrower represents, warrants and covenants that (a) Borrower is the holder of the fee simple title to the Premises, free and clear of all liens and encumbrances, except those liens and encumbrances permitted in writing by Lender (the "Permitted Exceptions"); and (b) Borrower has legal power and authority to mortgage and convey the Premises.

2. **Payment of Taxes and Assessments.** Borrower shall pay all general taxes, special taxes, special assessments, water charges, sewer service charges, and all other liens or charges levied or assessed against the Premises, or any interest therein, of any nature whatsoever when due and before any penalty or interest is assessed, and, at the request of Lender, shall furnish to Lender duplicate receipts of payment therefor. If any special assessment is permitted by applicable law to be paid in installments, Borrower shall have the right to pay such assessment in installments, so long as all such installments are paid prior to the due date thereof. Notwithstanding anything contained herein to the contrary, Borrower shall have the right to protest any taxes assessed against the Premises, so long as such protest is conducted in good faith

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by appropriate legal proceedings diligently prosecuted and Borrower shall furnish to the title insurer such security or indemnity as said insurer requires to induce it to issue an endorsement, in form and substance acceptable to Lender, insuring over any exception created by such protest.

3. **Stamp Tax.** If, by the laws of the United States of America, or of any state or political subdivision having jurisdiction over Borrower, any tax is due or becomes due in respect of the execution and delivery of this Mortgage or the Note, Borrower covenants and agrees to pay such tax in the manner required by any such law. Borrower further covenants to reimburse Lender for any sums which Lender may expend by reason of the imposition of any such tax. Notwithstanding the foregoing, Borrower shall not be required to pay any income or franchise taxes of Lender.

4. **Effect of Extensions of Time.** If the payment of the indebtedness secured hereby or any part thereof is extended or varied or if any part of any security for the payment of the indebtedness is released, all persons now or at any time hereafter liable therefor, or interested in the Premises or having an interest in Borrower, shall be held to assent to such extension, variation or release, and their liability and the lien and all of the provisions hereof shall continue in full force, any right of recourse against all such persons being expressly reserved by Lender, notwithstanding such extension, variation or release.

5. **Effect of Changes in Laws Regarding Taxation.** If any law is enacted after the date hereof requiring (i) the deduction of any lien on the Premises from the value thereof for the purpose of taxation or (ii) the imposition upon Lender of the payment of the whole or any part of the taxes or assessments, charges or liens herein required to be paid by Borrower, or (iii) a change in the method of taxation of mortgages or debts secured by mortgages or Lender's interest in the Premises, or the manner of collection of taxes, so as to affect this Mortgage or the indebtedness secured hereby or the holders thereof, then Borrower, upon demand by Lender, shall pay such taxes or assessments, or reimburse Lender therefor; provided, however, that Borrower shall not be deemed to be required to pay any income or franchise taxes of Lender. Notwithstanding the foregoing, if in the opinion of counsel for Lender it may be unlawful to require Borrower to make such payment or the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then Lender may declare all of the indebtedness secured hereby to be immediately due and payable.

6. **Lender's Performance of Defaulted Acts and Expenses Incurred by Lender.** If an Event of Default has occurred and is continuing, Lender may, but need not (i) make any payment or perform any act herein required of Borrower in any form and manner deemed expedient by Lender, (ii) make full or partial payments of principal or interest on prior encumbrances, if any, (iii) purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, (iv) redeem from any tax sale or forfeiture affecting the Premises or consent to any tax or assessment or (v) cure any default of Borrower in any lease of the Premises. All monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including attorneys' fees, and any other monies advanced by Lender in regard to any tax referred to in Paragraph 3 above or to protect the Premises or the lien hereof,

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shall be so much additional indebtedness secured hereby, and shall become immediately due and payable by Borrower to Lender, upon demand, and with interest thereon at the Default Rate (as defined in the Note) then in effect. In addition to the foregoing, any costs, expenses and fees, including attorneys' fees, incurred by Lender in connection with (a) sustaining the lien of this Mortgage or its priority, (b) protecting or enforcing any of Lender's rights hereunder, (c) recovering any indebtedness secured hereby, (d) any litigation or proceedings affecting the Note, this Mortgage or the Premises, including without limitation, bankruptcy and probate proceedings, or (e) preparing for the commencement, defense or participation in any threatened litigation or proceedings affecting the Note, this Mortgage or the Premises, shall be so much additional indebtedness secured hereby, and shall become immediately due and payable by Borrower to Lender, upon demand, and with interest thereon at the Default Rate. The interest accruing under this Paragraph 7 shall be immediately due and payable by Borrower to Lender, and shall be additional indebtedness evidenced by the Note and secured by this Mortgage. Lender's failure to act shall never be considered as a waiver of any right accruing to Lender on account of any Event of Default. Should any amount paid out or advanced by Lender hereunder, or pursuant to any agreement executed by Borrower in connection with the Loan, be used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any lien or encumbrance upon the Premises or any part thereof, then Lender shall be subrogated to any and all rights, equal or superior titles, liens and equities, owned or claimed by any owner or holder of said outstanding liens, charges and indebtedness, regardless of whether said liens, charges and indebtedness are acquired by assignment or have been released of record by the holder thereof upon payment.

7. **Lender's Reliance on Tax Bills and Claims for Liens.** Lender, in making any payment hereby authorized: (a) relating to taxes and assessments, may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof; or (b) for the purchase, discharge, compromise or settlement of any other prior lien, may do so without inquiry as to the validity or amount of any claim for lien which may be asserted.

8. **Event of Default; Acceleration.** Each of the following shall constitute an "Event of Default" for purposes of this Mortgage:

(a) Borrower fails to pay on the date when due (i) any installment of principal or interest payable pursuant to the Note, or (ii) any other amount payable pursuant to the Note or this Mortgage;

(b) Borrower fails to promptly perform or cause to be performed any other obligation or observe any other condition, covenant, term, agreement or provision required to be performed or observed by Borrower under the Note or this Mortgage; provided, however, that if such failure by its nature can be cured, then so long as the continued operation and safety of the Premises, and the priority, validity and enforceability of the lien created by the Mortgage and the value of the Premises are not impaired, threatened or jeopardized, then Borrower shall have a period (the "Cure

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Period”) of thirty days after written notice from Lender of such failure to cure the same and an Event of Default shall not be deemed to exist during the Cure Period, provided further that if Borrower commences to cure such failure during the Cure Period and is diligently and in good faith attempting to effect such cure, the Cure Period shall be extended for thirty additional days, but in no event shall the Cure Period be longer than sixty days in the aggregate;

(c) The existence of any inaccuracy or untruth in any material respect in any representation or warranty contained in this Mortgage or of any statement or certification as to facts delivered to Lender by Borrower;

(d) Borrower files a voluntary petition in bankruptcy or is adjudicated a bankrupt or insolvent or files any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal, state, or other statute or law, or seeks or consents to or acquiesces in the appointment of any trustee, receiver or similar officer of Borrower or of all or any substantial part of the property of Borrower or any of the Premises;

(e) The commencement of any involuntary petition in bankruptcy against Borrower or the institution against Borrower of any reorganization, arrangement, composition, readjustment, dissolution, liquidation or similar proceedings under any present or future federal, state or other statute or law, or the appointment of a receiver, trustee or similar officer for all or any substantial part of the property of Borrower which shall remain undismissed or undischarged for a period of sixty days; or

(f) Any sale, transfer, lease, assignment, conveyance, financing, lien or encumbrance made in violation of Paragraph 19 of this Mortgage.

If an Event of Default occurs, Lender may, at its option, declare the whole of the indebtedness hereby secured to be immediately due and payable without notice to Borrower, with interest thereon from the date of such Event of Default at the Default Rate.

## 9. Foreclosure; Expense of Litigation.

(a) Upon the occurrence of an Event of Default, Lender shall have the right to foreclose the lien hereof to satisfy the obligations secured hereby (or any part thereof) and/or exercise any right, power or remedy provided in this Mortgage. In the event of a foreclosure sale, Lender is hereby authorized, without the consent of Borrower, to assign any and all insurance policies to the purchaser at such sale or to take such other steps as Lender may deem advisable to cause the interest of such purchaser to be protected by any of such insurance policies.

(b) In any suit to foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the decree for sale all expenditures and expenses which may

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be paid or incurred by or on behalf of Lender for attorneys' fees, appraisers' fees, environmental audits, property inspections, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to the title as Lender may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Premises. All expenditures and expenses of the nature mentioned in this paragraph and such other expenses and fees as may be incurred in the enforcement of Borrower's obligations hereunder, the protection of said Premises and the maintenance of the lien of this Mortgage, including the fees of any attorney employed by Lender in any litigation or proceeding affecting this Mortgage, the Note, or the Premises, including probate and bankruptcy proceedings, or in preparations for the commencement or defense of any proceeding or threatened suit or proceeding shall be immediately due and payable by Borrower, with interest thereon at the Default Rate and shall be secured by this Mortgage.

10. **Application of Proceeds of Foreclosure Sale.** The proceeds of any foreclosure sale of the Premises shall be distributed and applied in the following order of priority: first, to all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in Paragraph 9 above; second, to all other items which may under the terms hereof constitute secured indebtedness additional to that evidenced by the Note, with interest thereon as provided herein; third, to all principal and interest remaining unpaid on the Note; and fourth, any surplus to Borrower, its successors or assigns, as their rights may appear or to any other party legally entitled thereto.

11. **Appointment of Receiver.** Upon or at any time after the filing of a complaint to foreclose this Mortgage, the court in which such complaint is filed shall, upon petition by Lender, appoint a receiver for the Premises. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of Borrower at the time of application for such receiver and without regard to the value of the Premises or whether the same shall be then occupied as a homestead or not and Lender hereunder or any other holder of the Note may be appointed as such receiver. Such receiver shall have power to collect the rents, issues and profits of the Premises (i) during the pendency of such foreclosure suit, (ii) in case of a sale and a deficiency, during the full statutory period of redemption, whether there be redemption or not, and (iii) during any further times when Borrower, but for the intervention of such receiver, would be entitled to collect such rents, issues and profits. Such receiver also shall have all other powers and rights that may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during said period, including, to the extent permitted by law, the right to lease all or any portion of the Premises for a term that extends beyond the time of such receiver's possession without obtaining prior court approval of such lease. The court from time to time may authorize the application of the net income received by the receiver in payment of (a) the indebtedness secured hereby, or by any decree foreclosing this Mortgage, or any tax, special assessment or other lien which may be or become superior to

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the lien hereof or of such decree, provided such application is made prior to foreclosure sale, and (b) any deficiency upon a sale and deficiency.

12. **Lender's Right of Possession in Case of Default.** At any time after an Event of Default has occurred, Borrower shall, upon demand of Lender, surrender to Lender possession of the Premises.

13. **Rights Cumulative.** Each right, power and remedy herein conferred upon Lender is cumulative and in addition to every other right, power or remedy, express or implied, given now or hereafter existing at law or in equity, and each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by Lender, and the exercise or the beginning of the exercise of one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy, and no delay or omission of Lender in the exercise of any right, power or remedy accruing hereunder or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any Event of Default or acquiescence therein.

14. **Lender's Right of Inspection.** Lender and its representatives shall have the right to inspect the Premises and the books and records with respect thereto at all reasonable times, and access thereto shall be permitted for that purpose.

15. **Release Upon Payment and Discharge of Borrower's Obligations.** Lender shall release this Mortgage and the lien hereof by proper instrument upon payment and discharge of all indebtedness and other obligations secured hereby, including payment of all reasonable expenses incurred by Lender in connection with the execution of such release.

16. **Notices.** Any notices, communications and waivers under this Mortgage shall be in writing and shall be (i) delivered in person, (ii) mailed, postage prepaid, either by registered or certified mail, return receipt requested, or (iii) sent by overnight express courier, addressed in each case as follows:

To Lender: LaSalle National Bank  
3201 N. Ashland Ave.  
Chicago, Illinois 60657  
Attn.: Richard Jankowski

To Borrower: Milton and Elizabeth Pinsky  
595 Washington St.  
Glencoe, Illinois 60022

With copy to: Milton and Elizabeth Pinsky  
727 Longwood  
Glencoe, Illinois 60022

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or to any other address as to any of the parties hereto, as such party shall designate in a written notice to the other party hereto. All notices sent pursuant to the terms of this Paragraph shall be deemed received (i) if personally delivered, then on the date of delivery, (ii) if sent by overnight, express carrier, then on the next federal banking day immediately following the day sent, or (iii) if sent by registered or certified mail, then on the earlier of the third federal banking day following the day sent or when actually received.

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

18. **Waiver of Rights.** Borrower hereby covenants and agrees that Borrower shall not apply for or avail itself of any appraisal, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws," now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but hereby waives the benefit of such laws. To the fullest extent permitted by law, Borrower, for itself and all who may claim through or under it, waives any claims based on allegations that Lender has failed to act in a commercially reasonable manner (except as otherwise expressly provided in this Mortgage) and any and all rights to have the property and estates comprising the Premises marshalled upon any foreclosure of the lien hereof and further agrees that any court having jurisdiction to foreclose such lien may order the Premises sold as an entirety.

19. **Transfer of Premises and Other Interests; Further Encumbrance.**

(a) Neither all nor any portion of (i) the Premises or (ii) any interest of Borrower in the Premises shall be sold, conveyed, assigned, encumbered or otherwise transferred (nor shall any agreement be entered into to sell, convey, assign, encumber or otherwise transfer same) without, in each instance, the prior written consent of Lender, which consent may be given or withheld in Lender's sole and absolute discretion, and may be conditioned in any manner that Lender desires, including, without limitation, increases in the rate of interest charged on the Loan and payment of assumption fees. Any violation or attempted violation of the provisions of this Paragraph shall be an Event of Default for purposes of the Note and this Mortgage.

(b) Any consent by Lender, or any waiver by Lender of an Event of Default under this Paragraph 19 shall not constitute a consent to or waiver of any right, remedy or power of Lender upon a continuing or subsequent Event of Default under this Paragraph. Borrower acknowledges that any agreements, liens, charges or encumbrances created in violation of the provisions of this Paragraph 19 shall be void and of no force or effect. Borrower agrees that if any provision of this Paragraph 19 is deemed a restraint on alienation, that such restraint is a reasonable one.

20. **Expenses Relating to Note and Mortgage.**



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(a) Borrower will pay all expenses, charges, costs and fees relating to the Loan or necessitated by the terms of the Note or this Mortgage, including without limitation, Lender's reasonable attorneys' fees in connection with the negotiation, documentation, administration, servicing and enforcement of the Note or this Mortgage, all filing, registration and recording fees, all other expenses incident to the execution and acknowledgment of this Mortgage and all federal, state, county and municipal taxes, and other taxes (provided Borrower shall not be required to pay any income or franchise taxes of Lender), duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of the Note and this Mortgage. Borrower recognizes that, during the term of this Mortgage, Lender:

(i) May be involved in court or administrative proceedings, including, without restricting the foregoing, foreclosure, probate, bankruptcy, creditors' arrangements, insolvency, housing authority and pollution control proceedings of any kind, to which Lender shall be a party by reason of the Note or this Mortgage, or in which any of the Note, this Mortgage or the Premises is involved directly or indirectly;

(ii) May make preparations following the occurrence of an Event of Default hereunder for the commencement of any suit for the foreclosure hereof, which may or may not be actually commenced;

(iii) May make preparations following the occurrence of an Event of Default hereunder for, and do work in connection with, Lender's taking possession of and managing the Premises, which event may or may not actually occur;

(iv) May make preparations for and commence other private or public actions to remedy an Event of Default hereunder, which other actions may or may not be actually commenced;

(v) May enter into negotiations with Borrower or any of its agents, employees or attorneys in connection with the existence or curing of any Event of Default hereunder, the sale of the Premises, the assumption of liability for any of the indebtedness represented by the Note or the transfer of the Premises in lieu of foreclosure; or

(vi) May enter into negotiations with Borrower or any of its agents, employees or attorneys pertaining to Lender's approval of actions taken or proposed to be taken by Borrower which approval is required by the terms of this Mortgage.

(b) All expenses, charges, costs and fees described in this Paragraph 28 shall be so much additional indebtedness secured hereby, shall bear interest from the date so

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incurred until paid at the Default Rate and shall be paid, together with said interest, by Borrower forthwith upon demand.

21. **Financial Statements.** Borrower hereby represents and warrants that the financial statements for Borrower previously submitted to Lender are true, complete and correct in all material respects, disclose all actual and contingent liabilities of Borrower and do not contain any untrue statement of a material fact or omit to state a fact material to such financial statements. No material adverse change has occurred in the financial condition of Borrower from the dates of said financial statements until the date hereof. Borrower shall furnish to Lender copies of its filed tax returns upon request of Lender.

22. **Statement of Indebtedness.** Borrower, within seven days after being so requested by Lender, shall furnish a duly acknowledged written statement setting forth the amount of the debt secured by this Mortgage, the date to which interest has been paid and stating either that no offsets or defenses exist against such debt or, if such offsets or defenses are alleged to exist, the nature thereof.

23. **Further Instruments.** Upon request of Lender, Borrower shall execute, acknowledge and deliver all such additional instruments and further assurances of title and shall do or cause to be done all such further acts and things as may reasonably be necessary fully to effectuate the intent of this Mortgage.

24. **Additional Indebtedness Secured.** All persons and entities with any interest in the Premises or about to acquire any such interest should be aware that this Mortgage secures *more than the stated principal amount of the Note and interest thereon; this Mortgage secures any and all other amounts which may become due under the Note or any other document or instrument evidencing, securing or otherwise affecting the indebtedness secured hereby, including, without limitation, any and all amounts expended by Lender to operate, manage or maintain the Premises or to otherwise protect the Premises or the lien of this Mortgage.*

25. **Indemnity.** Borrower hereby covenants and agrees that no liability shall be asserted or enforced against Lender in the exercise of the rights and powers granted to Lender in this Mortgage, and Borrower hereby expressly waives and releases any such liability. Borrower shall indemnify and save Lender harmless from and against any and all liabilities, obligations, losses, damages, claims, costs and expenses (including attorneys' fees and court costs) (collectively, the "Claims") of whatever kind or nature which may be imposed on, incurred by or asserted against Lender at any time by any third party which relate to or arise from: (a) any suit or proceeding (including probate and bankruptcy proceedings), or the threat thereof, in or to which Lender may or does become a party, either as plaintiff or as a defendant, by reason of this Mortgage or for the purpose of protecting the lien of this Mortgage; (b) the offer for sale or sale of all or any portion of the Premises; and (c) the ownership, leasing, use, operation or maintenance of the Premises, if such Claims relate to or arise from actions taken prior to the surrender of possession of the Premises to Lender in accordance with the terms of this Mortgage;

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provided, however, that Borrower shall not be obligated to indemnify or hold Lender harmless from and against any Claims directly arising from the gross negligence or willful misconduct of Lender. All costs provided for herein and paid for by Lender shall be so much additional indebtedness secured hereby and shall become immediately due and payable without notice and with interest at the Default Rate.

**26. Waiver of Rights of Redemption and Reinstatement.** Borrower hereby releases and waives, to the fullest extent permitted by law, any and all rights of reinstatement and redemption provided in the Illinois Mortgage Foreclosure Law.

**27. Compliance with Environmental Laws.** In addition to all other provisions of this Mortgage, Borrower, at its cost and expense, shall comply with all laws, and all rules and regulations of any governmental authority ("Agency") having jurisdiction, concerning environmental matters, including, but not limited to, any discharge (whether before or after the date of this Mortgage) into the air, waterways, sewers, soil or ground water or any substance or "pollutant". Lender and its agents and representatives shall have access to the Premises and to the books and records of Borrower and any occupant of the Premises claiming by, through or under Borrower for the purpose of ascertaining the nature of the activities being conducted thereon and to determine the type, kind and quantity of all products, materials and substances brought onto the Premises or made or produced thereon. Borrower and all occupants of the Premises claiming under Borrower shall provide to Lender copies of all manifests, schedules, correspondence and other documents of all types and kinds when filed or provided to any Agency or as such are received from any Agency. Lender and its agents and representatives shall have the right to take samples in quantity sufficient for scientific analysis of all products, materials and substances present on the Premises including, but not limited to, samples of products, materials or substances brought onto or made or produced on the Premises by Borrower or an occupant claiming by, through or under Borrower or otherwise present on the Premises.

**28. Compliance with Illinois Mortgage Foreclosure Law.**

(a) In the event that any provision in this Mortgage shall be inconsistent with any provision of the Illinois Mortgage Foreclosure Law (Chapter 735, Sections 5/15-1101 et seq., Illinois Compiled Statutes) (herein called "IMFL") the provisions of IMFL shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with IMFL.

(b) If any provision of this Mortgage shall grant to Lender (including Lender acting as a mortgagee-in-possession) or a receiver appointed pursuant to this Mortgage any powers, rights or remedies prior to, upon or following the occurrence of an Event of Default which are more limited than the powers, rights or remedies that would otherwise

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be vested in Lender or in such receiver under IMFL in the absence of said provision, Lender and such receiver shall be vested with the powers, rights and remedies granted in IMFL to the full extent permitted by law.

(c) Without limiting the generality of the foregoing, all expenses incurred by Lender which are of the type referred to in Section 5/15-1510 or 5/15-1512 of IMFL, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated in this Mortgage, shall be added to the indebtedness secured by this Mortgage and/or by the judgment of foreclosure.

## 29. Miscellaneous.

(a) **Successors and Assigns.** This Mortgage and all provisions hereof shall be binding upon and enforceable against Borrower and its assigns and other successors. This Mortgage and all provisions hereof shall inure to the benefit of Lender, its successors and assigns and any holder or holders, from time to time, of the Note.

(b) **Invalidity of Provisions; Governing Law.** In the event that any provision of this Mortgage is deemed to be invalid by reason of the operation of law, or by reason of the interpretation placed thereon by any administrative agency or any court, Borrower and Lender shall negotiate an equitable adjustment in the provisions of the same in order to effect, to the maximum extent permitted by law, the purpose of this Mortgage and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected thereby and shall remain in full force and effect. This Mortgage is to be construed in accordance with and governed by the laws of the State of Illinois.

(c) **Municipal and Zoning Requirements.** Borrower shall not by act or omission permit any building or other improvement on premises not subject to the lien of this Mortgage to rely on the Premises or any part thereof or any interest therein to fulfill any municipal or governmental requirement, and Borrower hereby assigns to Lender any and all rights to give consent for all or any portion of the Premises or any interest therein to be so used. Similarly, no building or other improvement on the Premises shall rely on any premises not subject to the lien of this Mortgage or any interest therein to fulfill any governmental or municipal requirement. Borrower shall not by act or omission alter (or permit the alteration of) the zoning classification of the Premises in effect as of the date hereof, nor shall Borrower impair the integrity of the Premises as a single zoning lot separate and apart from all other premises. Any act or omission by Borrower which would result in a violation of any of the provisions of this subparagraph shall be void.

(d) **Option of Lender to Subordinate.** At the option of Lender, this Mortgage shall become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to insurance proceeds or any condemnation or eminent domain award) to any and all leases of all or any part of the Premises upon the execution by

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Lender of a unilateral declaration to that effect and the recording thereof in the Office of the Recorder of Deeds in and for the county wherein the Premises are situated.

(e) **Lender in Possession.** Nothing herein contained shall be construed as constituting Lender a mortgagee in possession in the absence of the actual taking of possession of the Premises by Lender pursuant to this Mortgage.

(f) **Relationship of Lender and Borrower.** Lender shall in no event be construed for any purpose to be a partner, joint venturer, agent or associate of Borrower or of any lessee, operator, concessionaire or licensee of Borrower in the conduct of their respective businesses, and, without limiting the foregoing, Lender shall not be deemed to be such partner, joint venturer, agent or associate on account of Lender becoming a mortgagee in possession or exercising any rights pursuant to this Mortgage or otherwise.

(g) **Time of the Essence.** Time is of the essence of the payment by Borrower of all amounts due and owing to Lender under the Note and the performance and observance by Borrower of all terms, conditions, obligations and agreements contained in this Mortgage.

(h) **No Merger.** It being the desire and intention of the parties hereto that the Mortgage and the lien hereof do not merge in fee simple title to the Premises, it is hereby understood and agreed that should Lender acquire any additional or other interest in or to the Premises or the ownership thereof, then, unless a contrary intent is manifested by Lender as evidenced by an express statement to that effect in an appropriate document duly recorded, this Mortgage and the lien hereof shall not merge in the fee simple title and this Mortgage may be foreclosed as if owned by a stranger to the fee simple title.

(i) **Maximum Indebtedness.** Notwithstanding anything contained herein to the contrary, in no event shall the indebtedness secured by this Mortgage exceed an amount equal to \$5,000,000.

(j) **JURISDICTION AND VENUE.** BORROWER HEREBY AGREES THAT ALL ACTIONS OR PROCEEDINGS INITIATED BY MORTGAGOR AND ARISING DIRECTLY OR INDIRECTLY OUT OF THIS MORTGAGE SHALL BE LITIGATED IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS, OR THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS OR, IF LENDER INITIATES SUCH ACTION, ANY COURT IN WHICH LENDER SHALL INITIATE SUCH ACTION AND WHICH HAS JURISDICTION. BORROWER HEREBY EXPRESSLY SUBMITS AND CONSENTS IN ADVANCE TO SUCH JURISDICTION IN ANY ACTION OR PROCEEDING COMMENCED BY LENDER IN ANY OF SUCH COURTS, AND HEREBY WAIVES PERSONAL SERVICE OF THE SUMMONS AND COMPLAINT, OR OTHER PROCESS OR

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PAPERS ISSUED THEREIN, AND AGREES THAT SERVICE OF SUCH SUMMONS AND COMPLAINT OR OTHER PROCESS OR PAPERS MAY BE MADE BY REGISTERED OR CERTIFIED MAIL ADDRESSED TO BORROWER AT THE ADDRESS TO WHICH NOTICES ARE TO BE SENT PURSUANT TO THIS MORTGAGE. BORROWER WAIVES ANY CLAIM THAT CHICAGO, ILLINOIS OR THE NORTHERN DISTRICT OF ILLINOIS IS AN INCONVENIENT FORUM OR AN IMPROPER FORUM BASED ON LACK OF VENUE. SHOULD BORROWER, AFTER BEING SO SERVED, FAIL TO APPEAR OR ANSWER TO ANY SUMMONS, COMPLAINT, PROCESS OR PAPERS SO SERVED WITHIN THE NUMBER OF DAYS PRESCRIBED BY LAW AFTER THE MAILING THEREOF, BORROWER SHALL BE DEEMED IN DEFAULT AND AN ORDER AND/OR JUDGMENT MAY BE ENTERED BY LENDER AGAINST BORROWER AS DEMANDED OR PRAYED FOR IN SUCH SUMMONS, COMPLAINT, PROCESS OR PAPERS. THE EXCLUSIVE CHOICE OF FORUM FOR BORROWER SET FORTH IN THIS PARAGRAPH SHALL NOT BE DEEMED TO PRECLUDE THE ENFORCEMENT, BY LENDER, OF ANY JUDGMENT OBTAINED IN ANY OTHER FORUM OR THE TAKING, BY LENDER, OF ANY ACTION TO ENFORCE THE SAME IN ANY OTHER APPROPRIATE JURISDICTION, AND BORROWER HEREBY WAIVES THE RIGHT, IF ANY, TO COLLATERALLY ATTACK ANY SUCH JUDGMENT OR ACTION.

(k) WAIVER OF RIGHT TO JURY TRIAL. LENDER AND BORROWER ACKNOWLEDGE AND AGREE THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THE NOTE OR THIS MORTGAGE OR WITH RESPECT TO THE TRANSACTIONS CONTEMPLATED HEREIN AND THEREIN WOULD BE BASED UPON DIFFICULT AND COMPLEX ISSUES AND THEREFORE, THE PARTIES AGREE THAT ANY COURT PROCEEDING ARISING OUT OF ANY SUCH CONTROVERSY WILL BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.

IN WITNESS WHEREOF, Borrower has executed this instrument the day and year first above written.

  
MILTON PINSKY

  
ELIZABETH PINSKY

R:\13151\Pinsky\Pinsky Mortgage.wpd

# UNOFFICIAL COPY

STATE OF ILLINOIS)

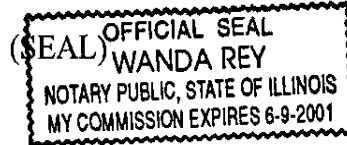
) SS.

COUNTY OF COOK )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that MILTON PINSKY, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 2nd day of November, 1998.

*Wanda Rey*  
NOTARY PUBLIC



STATE OF ILLINOIS)

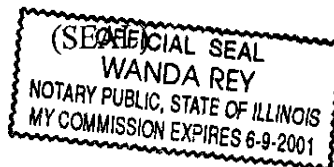
) SS.

COUNTY OF COOK )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that ELIZABETH PINSKY, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that she signed and delivered the said instrument as her own free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 2nd day of November, 1998.

*Wanda Rey*  
NOTARY PUBLIC



08013637

# UNOFFICIAL COPY

## EXHIBIT A

### Legal Description of Premises

LOT 3 IN H.L. PERLMAN'S SUBDIVISION OF THE NORTHWESTERLY 1/2 OF BLOCK 15 IN GLENCOE, A SUBDIVISION OF PART OF FRACTIONAL SECTION 5, PART OF THE SOUTHWEST 1/4, ALSO PART OF THE SOUTHWEST 1/4 AND A PART OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 6, PART OF THE NORTH 1/2 OF SECTION 7 AND THE NORTH FRACTIONAL 1/2 OF SECTION 8, TOWNSHIP 42 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Property of Cook County Clerk's Office

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