

UNOFFICIAL COPY

WHEN RECORDED MAIL TO:

First American Bank  
700 Busse Road  
Elk Grove Village, Illinois 60007

SEND TAX NOTICES TO:

88200480

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE ONLY

## MORTGAGE

THIS MORTGAGE IS DATED 04-27-1988, BETWEEN Edward P. Birmingham and Mary B. Birmingham, His Wife in Joint Tenancy, ("GRANTOR"), whose address is 6528 South Kildare, Chicago, Illinois 60629; and First American Bank ("LENDER"), whose address is 700 Busse Road, Elk Grove Village, Illinois 60007.

**GRANT OF MORTGAGE.** For valuable consideration, Grantor mortgages and warrants and conveys to Lender all of Grantor's right, title, and interest in and to the following described real property, together with all existing or subsequently erected or affixed buildings, improvements and fixtures, all easements, royalties, appurtenances, all rights relating to the real property (including minerals, oil, gas, water, and the like), and all ditch rights (including stock in utilities with ditch or irrigation rights) located in Cook County, State of Illinois (the "Real Property") and legally described as:

Lot 10 in 4th Addition to Prince Builders Subdivision, being a Subdivision in the West 1/2 of the Southwest 1/4 of the Northeast 1/4 of Section 22, Township 38 North, Range 13, East of the Third Principal Meridian, in Cook County, Illinois.

The Real Property or its address is commonly known as 6528 South Kildare, Chicago, Illinois 60629. The property tax identification number for the Real Property is 19-22-227-030.

Grantor presently assigns to Lender all of Grantor's right, title, and interest in and to the Rents from the Real Property. In addition, Grantor grants Lender a Uniform Commercial Code security interest in the Rents and the Personal Property described below.

**DEFINITIONS.** The following words shall have the following meanings when used in this Mortgage:

**Borrower.** The word "Borrower" means Edward P. Birmingham and Mary B. Birmingham. The words "Borrower" and "Grantor" are used interchangeably in this Mortgage.

**Grantor.** The word "Grantor" means Edward P. Birmingham and Mary B. Birmingham. The words "Grantor" and "Borrower" are used interchangeably in this Mortgage. The Grantor is the mortgagor under this Mortgage.

**Improvements.** The word "Improvements" means without limitation all existing and future buildings, structures, facilities, additions and similar construction on the Real Property.

**Indebtedness.** The word "Indebtedness" means all principal and interest payable under the Note and any amounts expended or advanced by Lender to discharge obligations of Grantor or expenses incurred by Lender to enforce obligations of Grantor under this Mortgage, together with interest on such amounts as provided in this Mortgage.

**Lender.** The word "Lender" means First American Bank. The Lender is the mortgagee under this Mortgage.

**Mortgage.** The word "Mortgage" means this Mortgage between Grantor and Lender, and includes without limitation all assignments and security interest provisions relating to the Personal Property and Rents.

**Note.** The word "Note" means that certain note or credit agreement dated 04-27-1988 in the original principal amount of \$1,986.55 from Borrower to Lender, together with all renewals of, extensions of, modifications of and substitutions for the note or agreement together with interest thereon as provided therein. The Annual Percentage Rate on the Note is 8.997%. The Note is payable in 24 Monthly payments of \$91.07. The currently scheduled final payment of principal and interest on the Note will be due on or before 05-11-1990.

**Personal Property.** The words "Personal Property" mean all equipment, fixtures, and other articles of personal property owned by Grantor, now or subsequently attached or affixed to the Real Property, together with all accessions, parts, and additions to, all replacements of, and all substitutions for any of such property, and together with all proceeds (including insurance proceeds and refunds of premiums) from any sale or other disposition of such property.

**Property.** The word "Property" means collectively the Real Property and the Personal Property.

**Real Property.** The words "Real Property" mean the real property described above in the "Grant of Mortgage" section.

**Related Documents.** The words "Related Documents" mean and include any promissory notes, loan agreements, guarantees, security agreements, and all other documents executed in connection with this Mortgage or the Indebtedness, whether now or hereafter existing.

**Rents.** The word "Rents" means all rents, revenues, income, issues, and profits from the Real Property and the Personal Property.

THIS MORTGAGE, INCLUDING THE ASSIGNMENT OF RENTS AND THE SECURITY INTEREST IN THE RENTS AND PERSONAL PROPERTY, IS GIVEN TO SECURE PAYMENT OF THE INDEBTEDNESS AND PERFORMANCE OF ALL OBLIGATIONS OF GRANTOR UNDER THE NOTE AND THIS MORTGAGE AND IS GIVEN AND ACCEPTED ON THE FOLLOWING TERMS:

**PAYMENT AND PERFORMANCE.** Except as otherwise provided in this Mortgage, Grantor shall pay to Lender all amounts secured by this Mortgage as they become due, and shall strictly perform all of Grantor's obligations.

**POSSESSION AND MAINTENANCE OF THE PROPERTY.** Grantor agrees that its possession and use of the Property shall be governed by the following provisions:

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**Possession and Use.** Until in default, Grantor may remain in possession and control of and operate and manage the Property and collect the Rents from the Property.

**Duty to Maintain.** Grantor shall maintain the Property in first class condition and promptly perform all repairs and maintenance necessary to preserve its value.

**Hazardous Substances.** Grantor represents and warrants that the Property never has been, and never will be so long as this Mortgage remains a lien on the Property, used for the generation, manufacture, storage, treatment, disposal, release or threatened release of any hazardous substance, as those terms are defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), applicable state laws, or regulations adopted pursuant to either of the foregoing. Grantor agrees to indemnify and hold harmless Lender against any and all claims and losses resulting from a breach of this provision of the Mortgage. This obligation to indemnify shall survive the payment of the indebtedness and satisfaction of this Mortgage.

**Nuisance, Waste.** Grantor shall neither conduct or permit any nuisance nor commit or suffer any strip or waste on or to the Property or any portion thereof, including without limitation removal, or alienation by Grantor of the right to remove, any timber, minerals (including oil and gas), or soil, or gravel or rock products.

**Removal of Improvements.** Grantor shall not demolish or remove any improvements from the Real Property without the prior written consent of Lender. Lender shall consent if Grantor makes arrangements satisfactory to Lender to replace any improvements which Grantor proposes to remove with improvements of at least equal value.

**Lender's Right to Enter.** Lender and its agents and representatives may enter upon the Real Property at all reasonable times to attend to Lender's interests and to inspect the Property.

**Compliance with Governmental Requirements.** Grantor shall promptly comply with all laws, ordinances, and regulations of all governmental authorities applicable to the use or occupancy of the Property. Grantor may contest in good faith any such law, ordinance, or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Grantor has notified Lender in writing prior to doing so and Lender's interests in the Property are not jeopardized. Lender may require Grantor to post adequate security or surety bond (reasonably satisfactory to Lender) to protect Lender's interest.

**Duty to Protect.** Grantor shall do all other acts, in addition to those acts set forth above in this section, that from the character and use of the Property are reasonably necessary to protect and preserve the Property.

**DUE ON SALE - CONSENT BY LENDER.** Lender may at its option, declare immediately due and payable all sums secured by this Mortgage upon the sale or transfer of all or any part of the Real Property, or any interest therein, without the Lender's prior written consent. A "sale or transfer" means the conveyance of real property or any right, title or interest therein; whether legal or equitable; whether voluntary or involuntary; by outright sale; deed; installment sale contract; land contract; contract for deed; leasehold interest with a term greater than three years; lease-option contract; sale, assignment or transfer of any beneficial interest in or to any land trust holding title to the Real Property; or any other method of conveyance of real property interest. If any Grantor is a corporation, transfer also includes any change in ownership of more than 25% of the voting stock of Grantor. However, this option shall not be exercised by Lender if exercise is prohibited by federal law or by Illinois law.

#### TAXES AND LIENS.

**Payment.** Grantor shall pay when due before they become delinquent all taxes, special taxes, assessments, water charges and sewer service charges levied against or on account of the Property, and shall pay when due all claims for work done on or for services rendered or material furnished to the Property. Grantor shall maintain the Property free of all liens having priority over or equal to the interest of Lender under this Mortgage, except for the lien of taxes and assessments not due, except for the prior indebtedness referred to below, and except as otherwise provided in the following paragraph.

**Right To Contest.** Grantor may withhold payment of any tax, assessment, or claim in connection with a good faith dispute over the obligation to pay, so long as Lender's interest in the Property is not jeopardized. If a lien arises or is filed as a result of nonpayment, Grantor shall within 15 days after the lien arises or, if a lien is filed, within 15 days after Grantor has notice of the filing, secure the discharge of the lien or deposit with Lender, cash or a sufficient corporate surety bond or other security satisfactory to Lender in an amount sufficient to discharge the lien plus any costs, attorneys' fees, or other charges that could accrue as a result of a foreclosure or sale under the lien. In any contest, Grantor shall defend itself and Lender and shall satisfy any adverse judgment before enforcement against the Property. Grantor shall name Lender as an additional obligee under any surety bond furnished in the contest proceedings.

**Evidence of Payment.** Grantor shall upon demand furnish to Lender evidence of payment of the taxes or assessments and shall authorize the appropriate governmental official to deliver to Lender at any time a written statement of the taxes and assessments against the Property.

**Notice of Construction.** Grantor shall notify Lender at least 15 days before any work is commenced, any services are furnished, or any materials are supplied to the Property, if any mechanics, materialmen, or other construction lien could be asserted on account of the work, services, or materials and the cost exceeds \$10,000.00. Grantor will on request furnish to Lender advance assurances satisfactory to Lender that Grantor can and will pay the cost of such improvements.

#### PROPERTY DAMAGE INSURANCE.

**Maintenance of Insurance.** Grantor shall procure and maintain policies of fire insurance with standard extended coverage endorsements on a replacement basis for the full insurable value covering all improvements on the Real Property in an amount sufficient to avoid application of any coinsurance clause, and with a standard mortgagee clause in favor of Lender. In no event shall the insurance be in an amount less than \$62,500.00. Policies shall be written by such insurance companies and in such form as may be reasonably acceptable to Lender. Grantor shall deliver to Lender certificates of coverage from each insurer containing a stipulation that coverage will not be cancelled or diminished without a minimum of 10 days prior written notice to Lender.

**Application of Proceeds.** Grantor shall promptly notify Lender of any loss or damage to the Property. Lender may make proof of loss if Grantor fails to do so within 15 days of the casualty. Lender may, at its election, apply the proceeds to the reduction of the indebtedness, payment of any lien affecting the Property, or the restoration and repair of the Property. If Lender elects to apply the proceeds to restoration and repair, Grantor shall repair or replace the damaged or destroyed improvements in a manner satisfactory to Lender. Lender shall, upon satisfactory proof of such expenditure, pay or reimburse Grantor from the proceeds for the reasonable cost of repair or restoration if Grantor is not in default hereunder. Any proceeds which have not been disbursed within 180 days after their receipt and which Lender has not committed to the repair or restoration of the Property shall be used to pay any amounts owing to Lender under this Mortgage, then to prepay accrued interest, and then principal of the indebtedness. If Lender holds any proceeds after payment in full of the indebtedness, such proceeds shall be paid to Grantor.

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**Unexpired Insurance at Sale.** Any unexpired insurance shall inure to the benefit of, and pass to, the purchaser of the Property covered by this Mortgage at any trustee's sale or other sale held under the provisions of this Mortgage, or at any foreclosure sale of such Property.

**Compliance With Prior Indebtedness.** During the period in which any prior Indebtedness described below is in effect, compliance with the insurance provisions contained in the instrument evidencing such prior Indebtedness shall constitute compliance with the insurance provisions under this Mortgage, to the extent compliance with the terms of this Mortgage would constitute a duplication of insurance requirement. If any proceeds from the insurance become payable on loss, the provisions in this Mortgage for division of proceeds shall apply only to that portion of the proceeds not payable to the holder of the prior Indebtedness.

**EXPENDITURES BY LENDER.** If Grantor fails to comply with any provision of this Mortgage, including any obligation to maintain prior Indebtedness in good standing as required below, or if any action or proceeding is commenced that would affect Lender's interests in the Property, Lender may, at its option, on Grantor's behalf take the required action and any amount that it expends in so doing shall be added to the Indebtedness. Amounts so added shall be payable on demand with interest from the date of expenditure until paid at the rate of 8.997% per annum. The rights provided for in this section shall be in addition to any other rights or any remedies to which Lender may be entitled on account of the default. By taking the required action, Lender shall not cure the default so as to bar it from any remedy that it otherwise would have had.

#### WARRANTY; DEFENSE OF TITLE.

**Title.** Grantor warrants that it holds marketable title of record to the Property in fee simple, free and clear of all liens and encumbrances other than those set forth in the prior indebtedness section below or in any policy of title insurance issued in favor of, and accepted by, Lender in connection with this Mortgage.

**Defense of Title.** Subject to the exception in the paragraph above, Grantor warrants and will forever defend the title to the Property against the lawful claims of all persons. In the event any action or proceeding is commenced that questions Grantor's title or the interest of Lender under this Mortgage, Grantor shall defend the action at its expense. Grantor may be the nominal party in such proceeding but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of its own choice, and Grantor will deliver, or cause to be delivered, to Lender such instruments as may be requested by it from time to time to permit such participation.

**Compliance With Laws.** Grantor warrants that its use of the Property complies with all existing applicable laws, ordinances, and regulations of governmental authorities.

**PRIOR INDEBTEDNESS.** The following provisions concerning prior indebtedness are a part of this Mortgage:

**Prior Lien.** Grantor has informed Lender of the existence of a lien in the form of Metmor Financial Inc., which may have priority to the lien of this Mortgage. The obligation secured by the prior lien has a current principal balance of approximately \$80,451.00 and is in the original principal amount of \$61,100.00. Grantor expressly covenants and agrees to pay or see to the payment of the prior indebtedness and to prevent any default thereunder.

**Default.** If the payment of any installment of principal or any interest on the prior indebtedness is not made within the time required by the note evidencing such indebtedness, or should an event of default occur under the instrument securing such indebtedness and not be cured during any applicable grace period therein, then the Indebtedness secured by this Mortgage shall, at the option of Lender, become immediately due and payable, and this Mortgage shall be in default.

**No Modification.** Grantor shall not enter into any agreement with the holder of any mortgage, deed of trust, or other security agreement which has priority over this Mortgage by which that agreement is modified, amended, extended, or renewed without the prior written consent of Lender. Grantor shall neither request nor accept any future advances under a prior mortgage, deed of trust, or other security agreement without the prior written consent of Lender.

#### CONDEMNATION.

**Application of Net Proceeds.** If all or any part of the Property is condemned, Lender may at its election require that all or any portion of the net proceeds of the award be applied to the Indebtedness. The net proceeds of the award shall mean the award after payment of all reasonable costs, expenses, and attorneys' fees necessarily paid or incurred by Grantor, or Lender in connection with the condemnation.

**Proceedings.** If any proceedings in condemnation are filed, Grantor shall promptly notify Lender in writing and Grantor shall promptly take such steps as may be necessary to defend the action and obtain the award. Grantor may be the nominal party in such proceeding but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of its own choice, and Grantor will deliver or cause to be delivered, to Lender such instruments as may be requested by it from time to time to permit such participation.

#### IMPOSITION OF TAX BY STATE.

**State Taxes Covered.** The following shall constitute state taxes to which this section applies: (a) a specific tax upon this type of Mortgage or upon all or any part of the Indebtedness secured by this Mortgage; (b) a specific tax on any Grantor which the taxpayer is authorized or required to deduct from payments on the Indebtedness secured by this type of Mortgage; (c) a tax on this type of Mortgage chargeable against the Lender or the holder of the Note; and (d) a specific tax on all or any portion of the Indebtedness or on payments of principal and interest made by any Grantor.

**Remedies.** If any state tax to which this section applies is enacted subsequent to the date of this Mortgage, this event shall have the same effect as a default, and Lender may exercise any or all of the remedies available to it in the event of a default unless the following conditions are met: (a) Grantor may lawfully pay the tax or charge imposed by the state tax; and (b) Grantor pays or offers to pay the tax or charge within 30 days after notice from Lender that the tax law has been enacted.

#### SECURITY AGREEMENT; FINANCING STATEMENTS.

**Security Agreement.** This instrument shall constitute a security agreement to the extent any of the Property constitutes fixtures or other personal property, and Lender shall have all of the rights of a secured party under the Illinois Uniform Commercial Code.

**Security Interest.** Upon request by Lender, Grantor shall execute financing statements and take whatever other action is requested by Lender to perfect and continue Lender's security interest in the Rents and Personal Property. Grantor hereby appoints Lender as Grantor's attorney in fact for the purpose of executing any documents necessary to perfect or continue the security interest granted in the Rents and Personal Property. In addition to recording this Mortgage in the real property records, Lender may, at any time and without further authorization from Grantor, file copies or reproductions of this Mortgage as a financing statement. Grantor will reimburse Lender for all expenses incurred in perfecting or continuing this security interest. Upon default, Grantor shall assemble the Personal Property and make it available to Lender within three days after receipt of written demand from Lender.

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**Addresses.** The mailing address of Grantor (debtor) and the mailing address of Lender (secured party) from which information concerning the security interest granted by this Mortgage may be obtained (each as required by the Illinois Uniform Commercial Code) are as stated on the first page of this Mortgage.

**FULL PERFORMANCE.** If Grantor pays all of the Indebtedness when due and otherwise performs all the obligations imposed upon Grantor under this Mortgage and the Note, Lender shall execute and deliver to Grantor a suitable satisfaction of this Mortgage and suitable statements of termination of any financing statement on file evidencing Lender's security interest in the Rents and the Personal Property. Grantor will pay, if permitted by applicable law, any reasonable termination fee as determined by Lender from time to time.

**DEFAULT.** The following shall constitute events of default:

**Default on Indebtedness.** Borrower fails to make any payment when due on the Indebtedness.

**Default on Other Payments.** Failure of Grantor within the time required by this Mortgage to make any payment for taxes or insurance, or for any other payment necessary to prevent filing of or to effect discharge of any lien.

**Compliance Default.** Failure to comply with any other term, obligation, covenant or condition contained in this Mortgage, the Note or in any of the Related Documents. If such a failure is curable and if Grantor has not been given a notice of a breach of the same provision of this Mortgage within the preceding 12 months, it may be cured (and no event of default will have occurred) if Grantor, after receiving written notice from Lender demanding cure of such failure: (a) cures the failure within 15 days; or (b) if the cure requires more than 15 days, immediately initiates steps sufficient to cure the failure and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

**Breaches.** Any warranty, representation or statement made or furnished to Lender by or on behalf of Grantor under this Mortgage, the Note or the Related Documents is, or at the time made or furnished was, false in any material respect.

**Insolvency.** The insolvency of Grantor, appointment of a receiver for any part of Grantor's property, any assignment for the benefit of creditors, the commencement of any proceeding under any bankruptcy or insolvency laws by or against Grantor, or the dissolution or termination of Grantor's existence as a going business (if Grantor is a business). Except to the extent prohibited by federal law or Illinois law, the death of Grantor (if Grantor is an individual) also shall constitute an event of default under this Mortgage.

**Foreclosure, etc.** Commencement of foreclosure whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Grantor against any of the Property, however this subsection shall not apply in the event of a good faith dispute by Grantor as to the validity or reasonableness of the claim which is the basis of the foreclosure, provided that Grantor gives Lender written notice of such claim and furnishes reserves or a surety bond for the claim satisfactory to Lender.

**Leasehold Default.** If the interest of Grantor in the Property is a leasehold interest, any default by Grantor under the terms of the lease, or any other event (whether or not the fault of Grantor) that results in the termination of Grantor's leasehold rights.

**Breach of Other Agreement.** Any breach by Grantor under the terms of any other agreement between Grantor and Lender that is not remedied within any grace period provided therein, including without limitation any agreement concerning any indebtedness or other obligation of Grantor to Lender, whether existing now or later.

**Events Affecting Guarantors.** Any of the preceding events occur with respect to any guarantor of any of the Indebtedness or such guarantor dies or becomes incompetent, unless the obligations arising under the guaranty and related agreements have been unconditionally assumed by the guarantor's estate in a manner satisfactory to Lender.

**Insecurity.** If Lender reasonably deems itself insecure.

**Prior Indebtedness.** Default of Grantor under any prior obligation or instrument securing any prior obligation, or commencement of any suit or other action to foreclose any prior lien on the Property.

**RIGHTS AND REMEDIES ON DEFAULT.** Upon the occurrence of any event of default and at any time thereafter, Lender may exercise any one or more of the following rights and remedies, in addition to any other rights or remedies provided by law:

**Accelerate Indebtedness.** Lender shall have the right at its option without notice to Grantor to declare the entire Indebtedness immediately due and payable, including any prepayment penalty which Grantor would be required to pay.

**UCC Remedies.** With respect to all or any part of the Personal Property, Lender shall have all the rights and remedies of a secured party under the Illinois Uniform Commercial Code.

**Collect Rents.** Lender shall have the right, without notice to Grantor, to take possession of the Property and collect the Rents, including amounts past due and unpaid, and apply the net proceeds, over and above Lender's costs, against the Indebtedness. In furtherance of this right, Lender may require any tenant or other user of the Property to make payments of rent or use fees directly to Lender. If the Rents are collected by Lender, then Grantor irrevocably designates Lender as Grantor's attorney in fact to endorse instruments received in payment thereof in the name of Grantor and to negotiate the same and collect the proceeds. Payments by tenants or other users to Lender in response to Lender's demand shall satisfy the obligations for which the payments are made, whether or not any proper grounds for the demand existed. Lender may exercise its rights under this subparagraph either in person, by agent, or through a receiver.

**Mortgagee In Possession.** Lender shall have the right to be placed as mortgagee in possession or to have a receiver appointed to take possession of all or any part of the Property, with the power to protect and preserve the Property, to operate the Property preceding foreclosure or sale, and to collect the Rents from the Property and apply the proceeds, over and above the cost of the receivership, against the Indebtedness. The mortgagee in possession or receiver may serve without bond if permitted by law. Lender's right to the appointment of a receiver shall exist whether or not the apparent value of the Property exceeds the Indebtedness by a substantial amount. Employment by Lender shall not disqualify a person from serving as a receiver.

**Judicial Foreclosure.** Lender may obtain a judicial decree foreclosing Grantor's interest in all or any part of the Property.

**Nonjudicial Sale.** If permitted by applicable law, Lender may foreclose Grantor's interest in all or any part of the Personal Property or the Real Property by nonjudicial sale.

**Deficiency Judgment.** If permitted by applicable law, Lender may obtain a judgment for any deficiency remaining in the Indebtedness due to Lender after application of all amounts received from the exercise of the rights provided in this section.

**Other Remedies.** Lender shall have all other rights and remedies provided in this Mortgage or the Note or by law.

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Property of Cook County Clerk's Office

**Sale of the Property.** To the extent permitted by applicable law, Grantor hereby waives any and all right to have the property marshalled. In exercising its rights and remedies, Lender shall be free to sell all or any part of the Property together or separately, in one sale or by separate sales. Lender shall be entitled to bid at any public sale on all or any portion of the Property.

**Notice of Sale.** Lender shall give Grantor reasonable notice of the time and place of any public sale of the Personal Property or of the time after which any private sale or other intended disposition of the Personal Property is to be made. Reasonable notice shall mean notice given at least 10 days before the time of the sale or disposition.

**Waiver; Election of Remedies.** A waiver by any party of a breach of a provision of this Mortgage shall not constitute a waiver of or prejudice the party's rights otherwise to demand strict compliance with that provision or any other provision. Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or take action to perform an obligation of Grantor under this Mortgage after failure of Grantor to perform shall not affect Lender's right to declare a default and exercise its remedies under this Mortgage.

**Attorneys' Fees; Expenses.** If Lender institutes any suit or action to enforce any of the terms of this Mortgage, Lender shall be entitled to recover such sum as the court may adjudge reasonable as attorneys' fees at trial and on any appeal. Whether or not any court action is involved, all reasonable expenses incurred by Lender that in Lender's opinion are necessary at any time for the protection of its interest or the enforcement of its rights shall become a part of the indebtedness payable on demand and shall bear interest from the date of expenditure until repaid at the Note rate. Expenses covered by this paragraph include, without limitation, however subject to any limits under applicable law, Lender's attorney fees and legal expenses whether or not there is a lawsuit, including attorneys' fees for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals and any anticipated post-judgment collection services, the cost of searching records, obtaining title reports (including foreclosure reports), surveyors' reports, and appraisal fees, and title insurance, to the extent permitted by applicable law. Borrower also will pay any court costs, in addition to all other sums provided by law.

**NOTICES TO GRANTOR AND OTHER PARTIES.** Any notice under this Mortgage, including without limitation any Notice of Default and any Notice of Sale to Grantor, shall be in writing and shall be effective when actually delivered or, if mailed, shall be deemed effective on the third day after being deposited as either first class mail, registered or certified mail, postage prepaid, directed to the addresses shown at the top of page 1. Any party may change its address for notices by written notice to the other parties. All copies of notices of foreclosure from the holder of any lien which has priority over this Mortgage shall be sent to Lender's address, as shown near the top of the first page of this Mortgage. For notice purposes, Grantor agrees to keep Lender informed at all times of Grantor's current address.

**MISCELLANEOUS PROVISIONS.** The following provisions are a part of this Mortgage:

**Waiver of Right of Redemption.** NOTWITHSTANDING ANY OF THE PROVISIONS TO THE CONTRARY CONTAINED IN THIS MORTGAGE, GRANTOR HEREBY WAIVES, TO THE EXTENT PERMITTED UNDER ILL. REV. STAT., CH. 110, SECTION 16-1001(b) OR ANY SIMILAR LAW EXISTING AFTER THE DATE OF THIS MORTGAGE, ANY AND ALL RIGHTS OF REDEMPTION ON BEHALF OF GRANTOR AND ON BEHALF OF ANY OTHER PERSONS PERMITTED TO REDEEM THE PREMISES.

**Successors and Assigns.** Subject to the limitations stated in this Mortgage on transfer of Grantor's interest, this Mortgage shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Property becomes vested in a person other than Grantor, Lender, without notice to Grantor, may deal with Grantor's successors with reference to this Mortgage and the indebtedness by way of forbearance or extension without releasing Grantor from the obligations of this Mortgage or liability under the Indebtedness.

**Applicable Law.** This Mortgage has been delivered to Lender in the State of Illinois. Except as set forth hereinafter, this Mortgage shall be governed by, construed and enforced in accordance with the laws of the State of Illinois, except and only to the extent of procedural matters related to the perfection and enforcement by Lender of its rights and remedies against the Property, which matters shall be governed by the laws of the State of Illinois. However, in the event that the enforceability or validity of any provision of this Mortgage is challenged or questioned, such provision shall be governed by whichever applicable state or federal law would uphold or would enforce such challenged or questioned provision. The loan transaction which is evidenced by the Note and this Mortgage (which secures the Note) has been applied for, considered, approved and made in the State of Illinois.

**Time of Essence.** Time is of the essence of this Mortgage.

**Waiver of Homestead Exemption.** Grantor hereby releases and waives all rights and benefits of the homestead exemption laws of the State of Illinois as to all indebtedness secured by this Mortgage.

**Merger.** There shall be no merger of the interest or estate created by this Mortgage with any other interest or estate in the Property at any time held by or for the benefit of Lender in any capacity, without the written consent of Lender.

**Amendment.** No alteration or amendment of this Mortgage or the Note shall be effective unless in writing and signed by the parties sought to be charged or bound by the alteration or amendment.

**Caption Headings.** Caption headings in this Mortgage are for convenience purposes only and are not to be used to interpret or define the provisions of this Mortgage.

**Waivers and Consents.** Lender shall not be deemed to have waived any rights under this Mortgage (or under the Related Documents) unless such waiver is in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by any party of a provision of this Mortgage shall not constitute a waiver of or prejudice the party's right otherwise to demand strict compliance with that provision or any other provision. Whenever consent by Lender is required in this Mortgage, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required.

**Severability.** The unenforceability or invalidity of any provision or provisions of this Mortgage as to any persons or circumstances shall not render that provision or those provisions unenforceable or invalid as to any other persons or circumstances, and all provisions of this Mortgage, in all other respects, shall remain valid and enforceable.

**Multiple Parties.** If Grantor (including any and all Borrowers executing this Mortgage) consists of more than one person or entity, all obligations of Grantor under this Mortgage shall be joint and several, and all references to Grantor shall mean each and every Grantor.

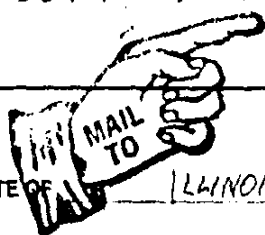
EACH GRANTOR ACKNOWLEDGES IT HAS READ ALL OF THE PROVISIONS OF THIS MORTGAGE AND EACH GRANTOR AGREES TO ITS TERMS.

x *Edward P. Birmingham*  
Edward P. Birmingham

x *Mary B. Birmingham*  
Mary B. Birmingham

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This Mortgage prepared by:

FIRST AMERICAN BANK  
6948 OLD FARMERS RD.  
SKOKIE, ILL. 60077

## INDIVIDUAL ACKNOWLEDGMENT

STATE OF ILLINOIS )

) ss

COUNTY OF COOK )

On this day before me, the undersigned Notary Public, personally appeared <sup>JR</sup> Edward P. Birmingham and Mary B. Birmingham, to me known to be the individuals described in and who executed the Mortgage and acknowledged that they signed the Mortgage as their free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and official seal this 3<sup>RD</sup> day of MAY, 19 88.

By Philip Wong Residing at 4021 W 63<sup>RD</sup> STREET

Notary Public in and for the State of ILLINOIS My commission expires 1-12-90

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