

# UNOFFICIAL COPY 90616326

This instrument was prepared by and return after recording to:  
Susan Ghelerter  
Fuchs & Roselli, Ltd.  
Six West Hubbard Street #800  
Chicago, Illinois 60610

## PURCHASE MONEY TRUST DEED AND SECURITY AGREEMENT

THIS TRUST DEED is made as of this 14 day of December, 1990, between RIVER FOREST STATE BANK AND TRUST COMPANY, a corporation of Illinois, as Trustee under Trust Agreement dated November 23, 1990 and known as Trust Number 3675 ("Mortgagor"), with an office at the address shown opposite its signature below and CHICAGO TITLE AND TRUST COMPANY, an Illinois corporation, whose address is 111 West Washington Street, Chicago, Illinois 60602 ("Trustee").

### RECITALS

WHEREAS, Mortgagor and its beneficiary (the "Beneficiary") are indebted to that certain holder (the "Holder") of the Note (as hereinafter defined) in the principal sum of ONE HUNDRED SIXTY-FOUR THOUSAND and no/100 DOLLARS (\$164,000.00), or so much thereof as may be now or hereafter disbursed to or for the benefit of Maker, which indebtedness is evidenced by Maker's note dated December 11, 1990 and all modifications, substitutions, extensions, replacements and renewals thereof ("Note") providing for repayment of principal and interest and providing for a final payment of all sums due thereunder on December 31, 1995, if not sooner. All obligors on the Note are collectively referred to herein as "Maker".

### THE GRANT

TO SECURE the repayment of the indebtedness evidenced by the Note, with interest thereon; the payment of all charges provided herein and all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Trust Deed; and the performance of the covenants and agreements contained herein and in the Note, all future advances and all other indebtedness of Mortgagor, its Beneficiary, or Maker to Holder, whether now or hereafter existing (collectively, the "Secured Indebtedness" or "Indebtedness") and also for other good and valuable consideration, the receipt and sufficiency whereof is acknowledged, Mortgagor does hereby convey, grant, and mortgage to Trustee the real estate ("Real Estate") located in the County of Cook, State of Illinois and described on Exhibit A, subject only to the covenants, conditions, easements and restrictions set forth on Exhibit B, if any, ("Permitted Encumbrances"). The Real Estate has the common street address of 3629 North Wayne, Chicago, Illinois 60613 ("Premises Address");

TOGETHER WITH all buildings, structures, improvements, tenements, fixtures, easements, mineral, oil and gas rights, appurtenances thereunto belonging, title or reversion in any parcels, strips, streets and alleys adjoining the Real Estate, any land or vaults lying within any street, thoroughfare, or alley adjoining the Real Estate, and any privileges, licenses, and franchises pertaining thereunto, all of the foregoing now or hereafter acquired, all leasehold estates and all rents, issues, and profits thereof, for so long and during all such times as Mortgagor, its successors and assigns may be entitled thereto, all the estate, interest, right, title or other claim or demand which Mortgagor now has or may hereafter have or acquire with respect to: (i) proceeds of

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insurance in effect with respect to the Premises and (ii) any and all awards, claims for damages, judgments, settlements and other compensation made for or consequent upon the taking by condemnation, eminent domain or any like proceeding, or by any proceeding or purchase in lieu thereof, of the whole or any part of the Premises, including, without limitation, any awards and compensation resulting from a change of grade of streets and awards and compensation for severance damages (collectively "Awards") (which are each pledged primarily and on a parity with the Real Estate and not secondarily), and all apparatus, equipment or articles now or hereafter located thereon used to supply heat, gas, air conditioning, water, light, power, refrigeration (whether single units or centrally controlled), and ventilation, and any other apparatus, equipment or articles used or useful in the operation of the Premises including all additions, substitutions and replacements thereof. All of the foregoing are declared to be a part of the Real Estate whether physically attached or not. All similar apparatus, equipment, articles and fixtures hereafter placed on the Real Estate by Mortgagor or its successors or assigns shall be considered as constituting part of the Real Estate. (All of the foregoing, together with the Real Estate (or the leasehold estate if this Trust Deed is on a leasehold) are hereinafter referred to as the "Premises").

To have and to hold the Premises unto the Holder, its successors and assigns forever, for the purposes and uses set forth herein, free from all rights and benefits under any Homestead Exemption laws of the state in which the Premises is located, which rights and benefits Mortgagor does hereby expressly release and waive.

## COVENANTS AND AGREEMENTS

Mortgagor and Holder covenant and agree as follows:

1. **Payment of Principal and Interest.** Mortgagor shall promptly pay or cause to be paid when due all of Secured Indebtedness.

2. **Funds for Taxes and Insurance.** Subject to applicable law, Mortgagor shall thereafter pay or cause to be paid to Holder on the day monthly payments of principal and interest are payable under the Note, until the Note is paid in full, the following amounts (collectively "Funds"): (i) a sum equal to all general and special real estate and property taxes and assessments, if any (collectively "Impositions") next due on the Premises based upon the most recently available real estate tax bill, divided by the whole number of months to elapse before the month prior to the date when such Impositions will become due and payable; provided that in the case of the first such deposit, there shall be deposited in addition to an amount which, when added to the aggregate amount of monthly sums next payable under this subparagraph (i), will result in a sufficient reserve to pay the Impositions next becoming due one month prior to the date when such Impositions are, in fact, due and payable, plus (ii) a sum equal to an installment of the premium or premiums that will become due and payable to renew the insurance required in Paragraph 6, each installment to be in such an amount that the payment of approximately equal installments will result in the accumulation of a sufficient sum of money to pay renewal premiums for such insurance at least one (1) month prior to the expiration or renewal date or dates of the policy or policies to be renewed; if any, all as are reasonably estimated initially and from time to time by Holder on the basis of assessments and bills and reasonable estimates thereof.

The Funds shall be held by Holder or, at Holder's election, in an institution the deposits or accounts of which are insured or guaranteed by a Federal or state agency ("depository account"). The Funds shall be applied to pay the Impositions,

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except that in the event of default, the Funds may be applied to the Secured Indebtedness as Holder sees fit. Holder shall not be required to pay any interest or earnings on the Funds unless otherwise required by law, in which case, all interest shall accrue in the depository account and Holder may charge for so holding and applying the Funds, analyzing the account or verifying and compiling assessments and bills. Upon Mortgagor's request, Holder shall provide to Mortgagor an annual accounting of the Funds showing credits and debits to the Funds and the purpose for which each debit was made. The Funds are pledged as additional security for the sums secured by this Trust Deed. The Funds are for the benefit of Mortgagor and Holder only and no third party shall have any right to or interest in the Funds or the application thereof.

If the amount of Funds held by Holder, together with the future monthly installments of Funds payable to the due dates of Impositions, shall exceed the amount required to pay said Impositions and insurance premiums as they fall due, such excess shall be retained by Holder or in the depository account and credited to subsequent monthly installments of Funds. If the amount of the Funds held by Holder shall not be sufficient to pay the Impositions and insurance premiums as they fall due, Mortgagor shall immediately pay or cause to be paid to Holder any amount necessary to make up the deficiency in one or more payments as Holder may require.

Upon payment in full of all Secured Indebtedness, Holder shall promptly refund to Mortgagor, or to any person to whom Mortgagor directs, any Funds held by Holder. If, under Paragraph 19, the Premises are sold or are otherwise acquired by Holder, Holder shall apply, no later than immediately prior to the sale of the Premises or its acquisition by Holder, any Funds held by Holder at the time of application as a credit against the Secured Indebtedness.

**3. Application of Payments.** Unless prohibited by applicable law, all payments received by Holder under this Trust Deed, the Note, the Loan Agreement, if any, and all other documents given to Holder to further evidence, secure or guarantee the Secured Indebtedness (collectively, and as amended, modified or extended, the "Loan Documents") shall be applied by Holder first to payments required from Mortgagor to holder under Paragraph 2, then to any sums advanced by Holder pursuant to Paragraph 8 to protect the security of this Trust Deed, then to interest payable on the Note and to any prepayment premium which may be due, and then to Note principal (and if principal is due in installments, application shall be to such installments in the inverse order of their maturity).

Any applications to principal of proceeds from insurance policies, as provided in Paragraph 6, or of condemnation awards, as provided in Paragraph 10, shall not extend or postpone the due date of any monthly installments of principal or interest, or change the amount of such installments or of the other charges or payments provided in the Note or other Loan Documents.

**4. Prior Encumbrances; Liens.** Mortgagor shall perform all of Mortgagor's obligations under any mortgage, deed of trust or other security agreement (collectively "Prior Encumbrances") creating a lien having priority over this Trust Deed, including Mortgagor's covenants to make payments when due. Any act or omission of Mortgagor which, with the giving of notice of the passage of time would constitute a default or event of default under any Prior Encumbrance or under any ground lease shall be a default under this Trust Deed. Mortgagor shall promptly deliver to Holder all notices given or received of any defaults or events of default under any Prior Encumbrance or any ground lease. Although this Paragraph requires Mortgagor to comply with Prior Encumbrances, it does not entitle Mortgagor to create or allow a Prior Encumbrance that would be otherwise prohibited by this Trust

Deed, such as Prohibited Transfers under Paragraph 17, or prohibited by the other Loan Documents.

Mortgagor shall keep the Premises free from mechanics' and all other encumbrances and liens, except Permitted Encumbrances and statutory liens for real estate taxes and assessments not yet due and payable.

5. **Taxes and Assessments; Rents.** Mortgagor shall pay or cause to be paid when due all Impositions and water, sewer and other charges, fines and Impositions attributable to the Premises and leasehold payments, if any, and all other sums due under any ground lease attributable to the Premises. Mortgagor shall provide evidence satisfactory to Holder of compliance with these requirements promptly after the respective due dates for payment. Mortgagor shall pay, in full, but under protest in the manner provided by Statute, any tax or assessment Mortgagor desires to contest.

6. **Insurance.** Mortgagor shall insure and keep insured the Premises against such perils and hazards, and in such amounts and with such limits, as Holder may from time to time require, and, in any event, including:

- (a) Insurance against loss to the Premises caused by fire, lightning, windstorms, vandalism, malicious mischief, and risks covered by the so-called "all risk" endorsement and such other risks as the Holder may reasonably require, in amounts (but in no event less than the initial stated principal amount of the Note) equal to the full replacement value of the Premises, fixtures and equipment, plus the cost of debris removal, with full replacement cost amount and inflation guard endorsement;
- (b) Comprehensive general public liability insurance against death, bodily injury and property damage arising in connection with the Premises with such limits as the Holder may reasonably require;
- (c) Rent and rental value insurance (or, at the discretion of Holder, business interruption insurance) in amounts sufficient to pay during any period of up to one (1) year in which the Premises may be damaged or destroyed (i) all rents derived from the Premises and (ii) all amounts (including, but not limited to, all Impositions, utility charges and insurance premiums) required to be paid by Mortgagor or by tenants of the Premises;
- (d) During the making of any alterations or improvements to the Premises (i) insurance covering claims based on the owner's or employer's contingent liability not covered by the insurance provided in subsection (b) above and (ii) Worker's Compensation insurance covering all persons engaged in such alterations or improvements;
- (e) Insurance against loss or damage by flood or mud slide, if the Premises are now, or at any time while the Secured Indebtedness remains outstanding shall be, situated in any area which an appropriate governmental authority designates as a flood or mud slide hazard area or the like, in such amounts as Holder may require, not exceeding the maximum legal limit



of coverage;

All insurance shall: (i) be in form and content, and shall be carried in companies, approved by Holder; (ii) have attached standard non-contributing mortgagee clauses and with loss payable to Holder; (iii) provide 30 days' advance written notice to Holder before cancellation or material modification; and (iv) provide that no claims shall be paid thereunder without ten days' advance written notice to Holder. Originals of all policies and renewals (or certificates evidencing the same), marked "paid", shall be delivered to Holder at least thirty (30) days before the expiration of existing policies. Mortgagor shall not carry any separate insurance on such improvements concurrent in kind or form with any insurance required hereunder or contributing in the event of loss without Holder's prior written consent, and any such policy shall have attached standard non-contributing Trust Deed clauses and with loss payable to Holder, and shall meet all other requirements set forth herein. Mortgagor shall give immediate notice of any casualty loss to Holder.

In case of loss covered by any of such policies, Holder is authorized to adjust, collect and compromise in its discretion, all claims thereunder and in such case, the Mortgagor covenants to sign upon demand or the Holder may sign or endorse on the Mortgagor's behalf, all necessary proofs of loss, receipts, releases, and other papers required by the insurance companies to be signed by the Mortgagor. At the option of the Holder, all or part of the proceeds of any such insurance may be applied either to the restoration of the Premises or to the reduction of the Secured Indebtedness. In the event the proceeds of insurance are applied to reduce the Secured Indebtedness, any such application shall constitute a prepayment and any prepayment premium required by the Loan Documents shall then be due and payable as provided therein. Holder may apply the insurance proceeds to such prepayment premium. In the event the Premises are restored, the Holder may pay the insurance proceeds in accordance with its customary construction loan payment procedures and the Mortgagor agrees in such event to pay the Holder its customary fee for such services.

**7. Use, Preservation and Maintenance of Premises; Leaseholds; Condominiums; Planned Unit Developments.** Mortgagor shall keep the premises in good condition and repair and shall not commit waste or permit impairment or deterioration of the Premises. Mortgagor shall not allow, store, treat or dispose of Hazardous Material as defined in Paragraph 27, nor permit the same to exist or be stored, treated or disposed of, from or upon the Premises. Mortgagor shall promptly restore or rebuild any buildings or improvements now or hereafter on the Premises which may become damaged or destroyed. Mortgagor shall comply with all requirements of law or municipal ordinances with respect to the use, operation, and maintenance of the Premises, including all environmental, health and safety laws and regulations, and shall make no material alterations in the Premises except as required by law, without the prior written consent of Holder. Mortgagor shall not grant or permit any easements, licenses, covenants or declarations of use against the Premises. If this Trust Deed is on a unit in a condominium or a planned unit development, Mortgagor shall perform all of Mortgagor's obligations under the declaration of covenants creating or governing the condominium or planned unit development, the by-laws and regulations of the condominium or planned unit development, and constituent documents. If this Trust Deed is on a ground leasehold, Mortgagor shall perform or cause to be performed all obligations of the lessee under the underlying ground lease.

**8. Protection of Holder's Security.** If Mortgagor fails to perform any of the covenants and agreements contained in this Trust Deed, the Note or the other Loan Documents, or if any action or proceeding is threatened or commenced which materially affects

Holder's interest in the Premises, then Holder, at Holder's option, upon notice to Mortgagor, may make such appearances, disburse such sums, including reasonable attorneys' fees, and take such action as it deems expedient or necessary to protect Holder's interest, including (i) making repairs; (ii) discharging Prior Encumbrances in full or part; (iii) paying, settling, or discharging tax liens, mechanics' or other liens, and paying ground rents (if any); (iv) procuring insurance; and (v) renting, operating and managing the Premises and paying operating costs and expenses, including management fees, of every kind and nature in connection therewith, so that the Premises shall be operational and usable for its intended purposes. Holder, in making such payments of Impositions and assessments, may do so in accordance with any bill, statement, or estimate procured from the appropriate public office without inquiry into the accuracy of same or into the validity thereof.

Any amounts disbursed by Holder pursuant to this Paragraph 8 shall be a part of the Secured Indebtedness and shall bear interest at the default interest rate provided in the Note (the "Default Rate"). Nothing contained in this Paragraph 8 shall require Holder to incur any expense or take any action hereunder, and inaction by Holder shall never be considered a waiver of any right accruing to Holder on account of this Paragraph 8.

**9. Inspection of Premises and Books and Records.** Mortgagor shall permit Holder and its representatives and agents to inspect the Premises from time to time during normal business hours and as frequently as Holder requests. Mortgagor shall keep and maintain full and correct books and records showing in detail the income and expenses of the Premises. From time to time upon not less than five (5) days demand, Mortgagor shall permit Holder or its agents to examine and copy such books and records and all supporting vouchers and data at its offices or at the address identified above.

**10. Condemnation.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Premises, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid directly to Holder. Mortgagor hereby grants a security interest to Holder in and to such proceeds. Holder is authorized to collect such proceeds and, at Holder's sole option and discretion, to apply said proceeds either to restoration or repair of the Premises or in payment of the Secured Indebtedness. In the event the Premises are restored, Holder may pay the condemnation proceeds in accordance with its customary construction loan payment procedures, and may charge its customary fee for such services. In the event the condemnation proceeds are applied to reduce the Secured Indebtedness, any such application shall constitute a prepayment, and any prepayment premium required by the Loan Documents shall then be due and payable as provided therein. Holder may apply the condemnation proceeds to such prepayment premium.

**11. Mortgagor Not Released; Forbearance by Holder Not a Waiver; Remedies Cumulative.** Any extension or other modification granted by Holder to any successor in interest of Mortgagor of the time for payment of all or any part of the Secured indebtedness shall not operate to release, in any manner, Mortgagor's liability. Any forbearance or inaction by Holder in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the later exercise of any such right or remedy. Any acts performed by Holder to protect the security of this Trust Deed, as authorized by Paragraph 8 or otherwise, shall not be a waiver of Holder's right to accelerate the maturity of the Indebtedness. All remedies provided in this Trust Deed are distinct and cumulative to any other right or remedy under this Trust Deed or afforded by law or equity, and may be exercised concurrently, independently or successively. No consent or waiver by Holder to or of any breach or default by Mortgagor shall be

deemed a consent or waiver to or of any other breach or default.

**12. Successors and Assigns Bound; Joint and Several Liability; Co-signers.** The covenants and agreements contained herein shall bind, and the rights hereunder shall inure to, the respective heirs, executors, legal representatives, successors and permitted assigns of Holder and Mortgagor. If this Trust Deed is executed by more than one Mortgagor, each Mortgagor shall be jointly and severally liable hereunder.

**13. Excess Loan Charges.** If the Loan secured by this Trust Deed is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Maker which exceeded permitted limits ("Excess Loan Charges") will, at Holder's option, either be refunded to Maker or applied as a credit against the then outstanding principal balance or accrued and unpaid interest thereon. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge under the Note. Neither Mortgagor nor any other guarantor or obligor on the Note shall have any action against Holder for any damages whatsoever arising from the payment of Excess Loan Charges.

**14. Legislation Affecting Holders' Rights.** If an enactment, modification or expiration of an applicable governmental law, ruling or regulation has the effect of rendering any provision of the Note, this Trust Deed or any of the other Loan Documents unenforceable according to its terms, Holder, at its option, may require immediate payment in full of all sums secured by this Trust Deed and may invoke any remedies permitted by paragraph 19.

**15. Notice.** Except for any notice required under applicable law to be given in another manner, any notices required or given under this Trust Deed shall be given by hand delivery or by certified mail, return receipt requested. Notices shall be given to Mortgagor at the address provided below and to Holder, as provided in the Note, at Holder's address stated above with a copy to John T. Roselli, Fuchs & Roselli, Ltd., Six West Hubbard Street, Suite 800, Chicago, Illinois 60610. Notices shall be deemed to have been given and effective on the date of delivery, if hand-delivered, or five (5) days after the date of mailing shown on the certified receipt, if mailed. Any party hereto may change the address to which notices are given by notice as provided herein.

**16. Governing Law; Severability.** The laws of Illinois shall govern the interpretation and enforcement of this Trust Deed. The foregoing sentence shall not limit the applicability of Federal law to this Trust Deed. If any provision or clause of this Trust Deed, or the application thereof, is adjudicated to be invalid or unenforceable, the validity or enforceability of the remainder of this Trust Deed shall be construed without reference to the invalid or unenforceable provision or clause.

**17. Prohibitions on Transfer of the Premises or of an Interest in Mortgagor.** It shall be an immediate default if, without the prior written consent of Holder, which consent may be granted or withheld at Holder's sole discretion, Mortgagor shall create, effect or consent to or shall suffer or permit any conveyance, sale (including an installment sale), assignment, transfer, lien, pledge, hypothecation, mortgage, security interest, or other encumbrance or alienation, whether by operation of law, voluntarily or otherwise, (collectively "Transfer") of (1) the Premises or any part thereof or interest therein; or (2) all or a portion of the beneficial interest of Mortgagor or the power of direction; (3) all or a portion of the stock of any corporate beneficiary of a trustee Mortgagor that results or could result in

a material change in the identity of the person(s) or entity(ies) previously in control of such corporation; (4) all or a portion of an interest in a partnership, or a joint venture interest of a joint venturer in the joint venture, if Mortgagor's beneficiary consists of or includes a partnership or joint venture, that results or could result in a material change in the identity of the person(s) or entity(ies) in control of such partnership or joint venture (each of the foregoing is referred to as a "Prohibited Transfer"). Provided, however, transfer of a partnership interest in Beneficiary upon the death of a partner in Beneficiary, where such transfer is to a member of the immediate family of the deceased partner, shall not constitute a prohibited transfer hereunder. In the event of such default, Holder, at its sole option, may declare the entire unpaid balance, including interest, immediately due and payable.

**18. Event of Default.** Each of the following shall constitute an event of default ("Event of Default") under this Trust Deed:

- (a) Mortgagor's or Beneficiary's failure to pay any amount due herein or secured hereby, or any installment of principal or interest when due and payable whether at maturity or by acceleration or otherwise under the Note, this Trust Deed, or any other Loan Document, which failure continues for more than five (5) days after the due date; provided, however, that this grace period shall not apply to the other sub-paragraphs of this Paragraph 18;
- (b) Mortgagor's or Beneficiary's failure to perform or observe any other covenant, agreement, representation, warranty or other provision contained in the Note, this Trust Deed (other than an Event of Default described elsewhere in this Paragraph 18) or any other Loan Document and such failure continues for a period of twenty-one (21) days after the earlier of Mortgagor's or Beneficiary's becoming aware of such failure or the effective date of notice thereof given by Trustee or Holder to Mortgagor; provided, however, that this grace period shall not apply to the other sub-paragraphs of this Paragraph 18;
- (c) A Prohibited Transfer occurs;
- (d) Mortgagor or any Beneficiary shall: (i) file a voluntary petition in bankruptcy, insolvency, debtor relief or for arrangement, reorganization or other relief under the Federal Bankruptcy Act or any similar state or federal law; (ii) consent to or suffer the appointment of or taking possession by a receiver, liquidator, or trustee, (or similar official) of the Mortgagor or Beneficiary or for any part of the Premises or any substantial part of the Mortgagor's or Beneficiary's other property; (iii) make any assignment for the benefit of Mortgagor's or Beneficiary's creditors; (iv) fail generally to pay Mortgagor's or Beneficiary's debts as they become due; (v) any involuntary petition in bankruptcy, insolvency, debtor relief, or similar law shall be filed against Beneficiary and such action shall not be dismissed within thirty (30) days of filing of such involuntary petition; or (vi) a court having jurisdiction shall enter a decree or order for relief in



respect of Mortgagor or Beneficiary in any involuntary case brought under any bankruptcy, insolvency, debtor relief, or similar law;

- (e) All or a substantial part of Mortgagor's or Beneficiary's assets are attached, seized, subjected to a writ or distress warrant, or are levied upon;
- (f) (i) the dissolution of existence of Mortgagor or Beneficiary, if Beneficiary is other than a natural person, voluntarily or involuntarily, whether by reason of death of a general partner of Mortgagor or Beneficiary or otherwise; (ii) the amendment or modification in any respect of Mortgagor's or Beneficiary's articles or agreement of partnership or its corporate resolutions or its articles of incorporation or bylaws that would materially and adversely affect Mortgagor's or Beneficiary's performance of its obligations under the Note, this Trust Deed or the other Loan Documents;
- (g) This Trust Deed shall not constitute a valid lien on and security interest in the Premises (subject only to the Permitted Encumbrances), or if such lien and security interest shall not be perfected;
- (h) The Premises are abandoned; or
- (i) An indictment or other charge is filed against the Mortgagor or Beneficiary, in any jurisdiction, under any federal or state law, for which forfeiture of the Premises or of other collateral securing the Loan or of which other funds, property or other assets of Mortgagor, Beneficiary or Holder is a potential penalty.

19. ACCELERATION; REMEDIES. AT ANY TIME AFTER AN EVENT OF DEFAULT, HOLDER, AT HOLDER'S OPTION, UPON TEN (10) DAYS WRITTEN NOTICE TO BENEFICIARY, MAY DECLARE ALL SUMS SECURED BY THIS TRUST DEED AND THE OTHER LOAN DOCUMENTS TO BE IMMEDIATELY DUE AND PAYABLE WITHOUT FURTHER DEMAND AND MAY FORECLOSE THIS TRUST DEED BY JUDICIAL PROCEEDING. HOLDER SHALL BE ENTITLED TO COLLECT IN SUCH PROCEEDING ALL EXPENSES OF FORECLOSURE, INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES AND COSTS INCLUDING ABSTRACTS AND TITLE REPORTS, ALL OF WHICH SHALL BECOME A PART OF THE SECURED INDEBTEDNESS AND IMMEDIATELY DUE AND PAYABLE, WITH INTEREST AT THE DEFAULT RATE. THE PROCEEDS OF ANY FORECLOSURE SALE OF THE PREMISES SHALL BE APPLIED AS FOLLOWS: FIRST, TO ALL COSTS, EXPENSES AND FEES INCIDENT TO THE FORECLOSURE PROCEEDINGS; SECOND, AS SET FORTH IN PARAGRAPH 3 OF THIS TRUST DEED; AND THIRD, ANY BALANCE TO MORTGAGOR OR AS A COURT MAY DIRECT.

20. [Intentionally deleted]

21. Appointment of Receiver. Upon acceleration under Paragraphs 17 and 19, and without further notice to Mortgagor, Holder shall be entitled to have a receiver appointed by a court to enter upon, take possession of and manage the Premises and to collect the Rents from the Premises including those past due. The receiver shall have the power to collect the Rents from the time of acceleration through the pendency of any foreclosure proceeding and during the full statutory period of redemption, if any. All Rents collected by the receiver shall be applied as the appointing court may direct and, in the absence of such direction, first to payment of the costs and expenses of the management of the Premises and collection of Rents including, but not limited to, receiver's

fees, premiums on receiver's bonds and reasonable attorneys' fees, and then as provided in Paragraph 3. The receiver shall be liable to account only for those Rents actually received.

22. **Release.** Upon payment of all Secured Indebtedness, Trustee shall release this Trust Deed upon payment by Mortgagor of all costs and fees to release same, if any. Mortgagor shall be responsible for recording the release, including all related costs of recordation.

23. **Security Agreement.** Without limiting any other provisions of this Trust Deed, this Trust Deed constitutes a Security Agreement under the Uniform Commercial Code of the State of Illinois (hereinafter called the "Code") with respect to all fixtures, apparatus, equipment or articles, and all replacements and substitutions, now or hereafter located on the Premises as set forth in the description of the Premises above, including but not limited to the air-conditioning, heating, gas, water, power, light, refrigeration, and ventilation systems which are presently located at the Premises, and with respect to all Awards, and all Funds and other sums which may be deposited with Holder pursuant hereto (all for the purposes of this paragraph called "Collateral"), and Mortgagor hereby grants to Holder a security interest in such Collateral. All of the terms, provisions, conditions and agreements contained in this Trust Deed pertain and apply to the Collateral as fully and to the same extent as to any other property comprising the Premises. When the Secured Indebtedness shall become due, whether by acceleration or otherwise, Holder shall have all remedies of a secured party under the Code. This Trust Deed is intended to be a financing statement with respect to any of the Collateral which constitute "fixtures" within the meaning of the Code. Mortgagor shall execute and deliver to Holder any other financing statements necessary to perfect the security interest in the Collateral created hereby. Any Code requirement for reasonable notice shall be met if such notice is delivered as provided herein at least five (5) days prior to the time of any sale, disposition, or other event or matter giving rise to the notice (which period of time and method of notice is agreed to be commercially reasonable).

24. **Waiver of Redemption.** Notwithstanding anything to the contrary herein contained, to the fullest extent permitted by the laws of the State of Illinois, Mortgagor hereby waives any and all rights of redemption from sale under any order, judgment or decree of foreclosure, on behalf of Mortgagor, and on behalf of (i) each and every person acquiring any interest in or title to the Premises subsequent to the date of this Trust Deed; (ii) any trust estate of which the Premises is a part and all beneficiaries of such trust estate; and (iii) all other persons.

25. **Business Loan.** Mortgagor hereby represents that: (a) the proceeds of the Secured Indebtedness (the "Loan") will be used for the purposes specified in Section 6404(1)(a) or (c) of Chapter 17 of the Illinois Revised Statutes, as amended; (b) the Loan constitutes a "business loan" within the purview of that Section; (c) the Loan is a transaction exempt from the Truth in Lending Act, 15 U.S.C. sec. 1601, et seq.; and (d) the proceeds of the Indebtedness will not be used for the purchase of registered equity securities within the purview of Regulation "U" issued by the Board of Governors of the Federal Reserve System.

26. [Intentionally deleted]

27. **Environmental Matters.**

A. **Definitions.** For purposes of this Trust Deed, "Hazardous Material" means: (i) "hazardous substances", as defined by the Comprehensive Environmental Response, Compensation, and the Liability Act ("CERCLA"), 42 U.S.C. sec. 9601 et seq.; the Illinois Environmental Protection Act ("Illinois Environmental Act"), Ill.

Rev. Stat. ch. 111-1/2, sec. 1001 et seq.; (ii) "hazardous wastes", as defined by the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. sec. 6902 et seq.; (iii) any pollutant or contaminant or hazardous, dangerous or toxic chemicals, materials, or substances within the meaning of any other applicable federal, state, or local law, regulation, ordinance, or requirement (including consent decrees and administrative orders) relating to or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material, all as amended or hereafter amended; (iv) more than 100 gallons of crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 points per square inch absolute); (v) any radioactive material, including any source, special nuclear or by-product material as defined at 42 U.S.C. sec. 2011 et seq., as amended or hereafter amended; and (vi) asbestos in any form or condition.

**B. Representations.** Mortgagor hereby represents to Holder that:

1. **Compliance.** To the best of Mortgagor and Beneficiary's knowledge based upon due inquiry, the Premises (which includes underlying groundwater and areas leased to tenants, if any), and the use and operation thereof, have been and are currently in compliance with all applicable laws, ordinances, requirements and regulations (including consent decrees and administrative orders) relating to public health and safety and protection of the environment, including those statutes, laws, regulations, and ordinances identified in subparagraph A above, all as amended and modified from time to time (collectively, "Environmental Laws"). All required governmental permits and licenses are in effect, and Mortgagor is in compliance therewith. To the best of Mortgagor and Beneficiary's knowledge based upon due inquiry, all Hazardous Material generated or handled on the Premises has been disposed of in a lawful manner.

2. **Absence of Hazardous Material.** No generation, manufacture, storage, treatment, transportation or disposal of Hazardous Material has occurred or is occurring on or from the Premises, except as has been disclosed in writing to and approved by Holder ("Permitted Material"). No environmental or public health or safety hazards currently exist with respect to the Premises or the business or operations conducted thereon. No underground storage tanks (including petroleum storage tanks) are present on or under the Premises except as has been disclosed in writing to and approved by Holder ("Permitted Tanks").

3. **Proceedings and Actions.** There have been, to the best of Mortgagor's and Beneficiary's knowledge, based upon due inquiry, no past, and there are no pending or threatened: (i) actions or proceedings by any governmental agency or any other entity regarding public health risks or the environmental condition of the Premises, or the disposal or presence of Hazardous Material, or regarding any Environmental Laws; or (ii) liens or governmental actions, notices of violations, notices of noncompliance or other proceedings of any kind that could impair the value of the Premises, or the priority of the Trust Deed lien or of any of the other Loan Documents.

**C. Mortgagor's Covenants.** Mortgagor hereby covenants with Trustee and Holder as follows:

1. **Compliance.** The Premises and the use and operation thereof, will remain in compliance with all Environmental Laws. All required governmental permits and licenses will remain in effect, and Mortgagor shall comply therewith. All Hazardous Material present, handled or generated on the Premises will be disposed of in a lawful manner. Mortgagor will satisfy all requirements of applicable Environmental Laws for the maintenance and removal of all underground storage tanks on the Premises, if any. Without limiting the foregoing, all Hazardous Material shall

be handled in compliance with all applicable Environmental Laws.

2. **Absence of Hazardous Material.** Other than Permitted Material, no Hazardous Material shall be introduced to or handled on the Premises without twenty-one (21) days' prior written notice to Holder.

3. **Proceedings and Actions.** Mortgagor shall immediately notify Holder and provide copies upon receipt of all written complaints, claims, citations, demands, inquiries, reports, or notices relating to the condition of the Premises or compliance with Environmental Laws. Mortgagor shall promptly cure and have dismissed with prejudice any such actions and proceedings to the satisfaction of Holder. Mortgagor shall keep the Premises free of any lien imposed pursuant to any Environmental Laws.

4. **Environmental Audit.** Mortgagor shall provide such information and certifications which Holder may reasonably request from time to time to insure Mortgagor's compliance with this Paragraph 27. To investigate Mortgagor's compliance with Environmental Laws and with this Paragraph, Holder shall have the right, but no obligation, at any time to enter upon the Premises, take samples, review Mortgagor's books and records, interview Mortgagor's employees and officers, and conduct similar activities. Mortgagor shall cooperate in the conduct of such an audit.

D. **Holder's Right to Rely.** Holder is entitled to rely upon Mortgagor's representations and warranties contained in this Paragraph 27 despite any independent investigations by Holder or its consultants. The Mortgagor and its Beneficiary shall take reasonable actions to determine for themselves, and to remain aware of, the environmental condition of the Premises and shall have no right to rely upon any environmental investigations or findings made by Holder or its consultants.

E. **Indemnification.** Mortgagor agrees to indemnify, defend (at trial and appellate levels and with counsel acceptable to Holder and at Mortgagor's sole cost), and hold Holder and Holder's parent and subsidiary corporations, and their affiliates, shareholders, directors, officers, employees, and agents (collectively "Holder's Affiliates"), free and harmless from and against all loss, liabilities, obligations, penalties, claims, litigation, demands, defenses, costs, judgments, suits, proceedings, damages (including consequential damages), disbursements or expenses of any kind or nature whatsoever (including attorneys' fees at trial and appellate levels and experts' fees and disbursements and expenses incurred in investigating, defending against or prosecuting any litigation, claim or proceeding) which may at any time be imposed upon, incurred by or asserted or awarded against Holder or any Holder's Affiliates in connection with or arising from:

- (1) any Hazardous Material on, in, under or affecting all or any portion of the Premises, the groundwater, or any surrounding areas;
- (2) any misrepresentation, inaccuracy or breach of any warranty, covenant or agreement contained or referred to in this Paragraph 27;
- (3) any violation or claim of violation by Mortgagor of any Environmental Laws; or
- (4) the imposition of any lien for damages caused by or the recovery of any costs for the cleanup, release or threatened release of Hazardous Material.

The foregoing indemnification shall survive repayment of the Note or any transfer of the Premises by foreclosure or by a deed in lieu of foreclosure. Mortgagor, its successors and assigns, hereby



waive, release and agree not to make any claim or bring any cost recovery action against Holder under CERCLA or any state equivalent, or any similar law now existing or hereafter enacted. It is expressly understood and agreed that to the extent that Holder is strictly liable under any Environmental Laws, Mortgagor's obligation to Holder under this indemnity shall likewise be without regard to fault on the part of Mortgagor with respect to the violation or condition which results in liability to Holder.

28. **Waiver of Jury Trial.** To the full extent not prohibited by applicable law, Mortgagor hereby waives any right to a trial by jury in any action or proceeding to enforce or defend any rights (i) under this Trust Deed, the other Loan Documents or under any instrument, document or agreement delivered or which may in the future be delivered in connection therewith; or (ii) arising from any banking relationship existing in connection with this Trust Deed or the other Loan Documents. Mortgagor agrees that any such action or proceeding shall be tried before a court and not before a jury.

29. **Interpretation.** This Trust Deed shall be construed pursuant to the laws of the State of Illinois. The headings of sections and paragraphs in this Trust Deed are for convenience only and shall not be construed in any way to limit or define the content, scope, or intent of the provisions. The use of singular and plural nouns, and masculine, feminine, and neuter pronouns, shall be fully interchangeable, where the context so requires. If any provision of this Trust Deed, or any paragraph, sentence, clause, phrase or word, or the application thereof, in any circumstances, is adjudicated to be invalid, the validity of the remainder of this Trust Deed shall be construed as if such invalid part were never included. Time is of the essence of the payment and performance of this Trust Deed.

30. **Compliance with Illinois Mortgage Foreclosure Law.** If any provision in this Trust Deed shall be inconsistent with any provision of the Illinois Mortgage Foreclosure Law (Chapter 110, secs. 15-1101 et seq., Illinois Revised Statutes) (the "Act") the provisions of the Act shall take precedence over the Trust Deed provisions, but shall not invalidate or render unenforceable any other Trust Deed provision that can be construed in a manner consistent with the Act.

If any Trust Deed provision shall grant to Holder any rights or remedies upon Mortgagor's default which are more limited than the rights that would otherwise be vested in Holder under the Act in the absence of such provision, Holder shall be vested with the rights granted in the Act to the full extent permitted by law.

Without limiting the generality of the foregoing, all expenses incurred by Holder to the extent reimbursable under Sections 15-1510 and 15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated in Paragraph 21 of this Trust Deed, shall be added to the Indebtedness secured by this Trust Deed or by the judgment of foreclosure.

31. **Land Trustee Exculpation.** This Trust Deed is executed by River Forest State Bank and Trust Company, not personally, but solely as Trustee in the exercise of the power and authority conferred upon and vested in it as Trustee. No personal liability shall be asserted or be enforceable against the Trustee because or in respect of this Trust Deed or its making, issue or transfer, and all such liability, if any, is expressly waived by each taker and holder hereof; except that Trustee in its personal and individual capacity warrants that it as trustee possesses full power and authority to execute this instrument. Nothing herein shall modify or discharge the personal liability of any other party. Each original and successive holder of this Trust Deed accepts the express condition that no duty shall rest upon the Trustee to

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sequester the rents, issues and profits arising from the Premises, or the proceeds arising from such Premise's sale or other disposition. In the Event of Default, the sole remedy of the holder, as far as Trustee is concerned, shall be foreclosure of the Trust Deed, action against any other security at any time given to secure the payment of the Secured Indebtedness, action to enforce the personal liability of other makers on the Note or the guarantors of the Note, or any other remedies as the holder in its sole discretion may elect.

IN WITNESS WHEREOF, Mortgagor has executed this Trust Deed.

THIS INSTRUMENT IS SUBJECT TO THE RENTAL STATE BANK AND TRUST COMPANY'S TRUST AGREEMENT DATED NOVEMBER 23, 1990 AND KNOWN AS TRUST NUMBER 3675. ALL THE COVENANTS AND CONDITIONS TO BE PERFORMED HEREUNDER BY RIVER FOREST STATE BANK AND TRUST COMPANY, AS TRUSTEE UNDER TRUST AGREEMENT DATED NOVEMBER 23, 1990 AND KNOWN AS TRUST NUMBER 3675, ARE INCORPORATED BY REFERENCE INTO THIS INSTRUMENT AND NO PORTION HEREOF SHALL BE DEEMED TO HAVE BEEN WAIVED BY THIS INSTRUMENT. THE TRUSTEE SHALL BE RESPONSIBLE FOR THE PERFORMANCE OF ANY OF THE COVENANTS, STATEMENTS, REPRESENTATIONS OR WARRANTIES CONTAINED IN THIS INSTRUMENT.

RIVER FOREST STATE BANK AND TRUST COMPANY, A CORPORATION OF ILLINOIS, AS TRUSTEE UNDER TRUST AGREEMENT DATED NOVEMBER 23, 1990 AND KNOWN AS TRUST NUMBER 3675

Attest:

By: *Michelle Perry* By: *Gene Durne*  
Its: ASSISTANT CONTROLLER Its: VICE PRESIDENT AND TRUST OFFICER

Mortgagor's Address:

Lake Street and Franklin Avenue  
River Forest, Illinois

PROPERTY OF COOK COUNTY CLERK'S OFFICE

Identification No. 7355365  
CHICAGO TITLE AND TRUST COMPANY, Trustee  
By: *Robert [Signature]*  
A Trust Secretary

90616326



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STATE OF ILLINOIS )  
                          ) SS  
COUNTY OF COOK   )

This instrument was acknowledged before me on December  
14 1990, by JAMES S. WATTS.

*Andrew W. Sohn*  
Notary Public, State of Illinois  
My Commission Expires 11/6/93

*Andrew W. Sohn*  
\_\_\_\_\_  
Notary Public

My commission expires:

November 6, 1993

Property of Cook County Clerk's Office

7655 55

90616326



EXHIBIT A

LEGAL DESCRIPTION

LOT 12 IN BLOCK 11 IN EDSONS SUBDIVISION OF THE SOUTH 3/4 OF THE EAST 1/2 OF THE NORTH WEST 1/4 OF SECTION 20, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN (EXCEPT A PART OF THE NORTH EAST CORNER THEREOF) TOGETHER WITH PART OF LOT 12 IN LAFLIN SMITH AND DYER'S SUBDIVISION OF THE NORTH EAST 1/4 OF SECTION 20, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

Property of Cook County Clerk's Office

PROPERTY ADDRESS: 3629 North Wayne  
Chicago, Illinois 60613

PERMANENT TAX NO.: 14-20-124-016-0000

735511

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## EXHIBIT B

### PERMITTED ENCUMBRANCES

1. General real estate taxes for 1990 and subsequent years not yet due and payable.

Property of Cook County Clerk's Office 785565