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FIRST MIDWEST BANK, N.A.

COMMERCIAL MORTGAGE

THIS MORTGAGE made this 13th day of January, 1992, between Northern Illinois Construction Co., an Illinois corporation, (herein called the "Mortgagor"), whose business address is commonly known as 611 Landwehr Road, Northbrook, Illinois, 60062, to First Midwest Bank, National Association, a national banking corporation doing business in the State of Illinois, whose address is 241 East Deerpath, Lake Forest, Illinois 60045 (herein, together with its successors and assigns, including each and every from time to time holder of the Note hereinafter referred to, called the "Mortgagee").

WHEREAS, the Mortgagor has, concurrently herewith, executed and delivered to the Mortgagee, the Mortgagor's promissory note of even date herewith in the principal amount of \$ 553,330.00 (herein called the "Note").

WHEREAS, the indebtedness evidenced by the Note, including the principal thereof and interest and premium, if any, thereon, and any extensions and renewals thereof, in whole or in part, and any and all other sums which may be at any time due or owing or required to be paid as herein or in Note provided, are herein called the "Liabilities." In no event shall the total amount of Liabilities, including loan proceeds disbursed plus any additional charges, exceed \$657,200.00

NOW, THEREFORE, to secure payment of the Liabilities and in consideration of One Dollar (\$1.00) in hand paid, receipt whereof is hereby acknowledged, Mortgagor does hereby grant, remise, release, alien, convey, mortgage and warrant to Mortgagee, its successors and assigns, the real estate commonly known as Lot 8 in Whisperwoods of Northbrook, Northbrook, Illinois and legally described on Exhibit A attached hereto and by this reference made a part hereof, which real estate, together with the property described in the next succeeding paragraph is herein called the "premises";

TOGETHER WITH all right, title and interest, including the right of use or occupancy, which Mortgagor may now have or hereafter acquire in and to (a) any lands occupied by streets, alleys, or public places adjoining said premises or in such streets, alleys or public places; (b) all

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improvements, tenements, hereditaments, gas, oil, minerals, easements, fixtures and appurtenances, and all other rights and privileges thereunto belonging or appertaining; (c) all apparatus, machinery, equipment, and appliances (whether single units or centrally controlled) of Mortgagor now or hereafter used to supply heat, gas, air conditioning, water, light, power, ventilation or refrigeration or to treat or dispose of refuse or waste; (d) all screens, window shades, blinds, wainscoting, storm doors and windows, floor coverings, and awnings of Mortgagor; (e) all apparatus, machinery, equipment and appliances of Mortgagor used or useful for or in connection with the maintenance and operation of said real estate or intended for the use of convenience of tenants, other occupants, or patrons thereof; (f) all items of furniture, furnishings, equipment, and personal property used or useful in the operation of said real estate owned by Mortgagor in connection with the premises; (g) all replacements and substitutions for the foregoing whether or not any of the foregoing is or shall be on or attached to said real estate; and (h) all proceeds of the foregoing. It is mutually agreed, intended, and declared, that all of the aforesaid property owned by Mortgagor shall, so far as permitted by law, be deemed to form a part and parcel of said real estate and for the purpose of this Mortgage to be real estate and covered by this Mortgage.

It is also agreed that if any of the property herein mortgaged is a fixture or of a nature so that a security interest therein can be perfected under the Uniform Commercial Code, this instrument shall constitute a fixture filing or a Security Agreement, as the case may be, and Mortgagor agrees to execute, deliver and file or refile any financing statement, continuation statement, or other instruments Mortgagee may require from time to time to perfect or renew such security interest under the Uniform Commercial Code.

As additional security for the Liabilities secured hereby, Mortgagor does hereby pledge and assign to Mortgagee from and after the date hereof (including any period of redemption), primarily and on a parity with said real estate, all the rents, issues and profits of the premises and all rents, issues, profits, revenues, royalties, bonuses, rights and benefits due, payable or accruing (including all deposits of money as advance rent, for security or as earnest money or as downpayment for the purchase of all or any part of the premises) under any and all present and future leases, contracts or other agreements relative to the ownership or occupancy of all or any portion of the premises and does hereby transfer and assign to Mortgagee all such leases and agreements (including all Mortgagor's rights under any contracts for the sale of any portion of the premises).

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Mortgagor agrees not to procure or accept the prepayment of any rents or other income from the premises for more than one month, except with the prior written consent of the Mortgagee. Mortgagor further agrees to execute and deliver such assignments of leases or assignments of land purchase contracts as Mortgagee may from time to time request. In the event of a Default (as hereinafter defined) under this Mortgage, (1) the Mortgagor agrees, upon demand, to deliver to the Mortgagee all leases, land purchase contracts and other agreements for the ownership or occupancy of any part of the premises, with such additional assignments thereof as the Mortgagor may request and agrees that the Mortgagee may assume the management of the premises and collect the rents and other income therefrom, applying the same upon the Liabilities and (2) the Mortgagor hereby authorizes and directs all tenants, purchasers or other persons occupying or otherwise acquiring any interest in any part of the premises, in the event of Default, to pay all rents and other income due under said leases and agreements to the Mortgagee upon request of the Mortgagee. In the event of a Default, Mortgagor hereby appoints Mortgagee as its true and lawful attorney in fact to manage said property and collect the rents and other income, with full power to bring suit for collection of said rents and possession of said property, giving and granting unto said Mortgagee and unto its agent or attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in the protection of the security hereby conveyed; provided, however, that this power of attorney and assignment of rents shall not be construed as an obligation upon said Mortgagee to make or cause to be made any repairs that may be needful or necessary. Mortgagee shall receive such rents and other income of said premises, out of which it shall pay: (1) reasonable charges for collection hereunder, costs of necessary repairs and other costs requisite and necessary during the continuance of this power of attorney and assignment of rents, (2) general and special taxes, insurance premiums and all of the Liabilities. This power of attorney and assignment of rents shall be irrevocable until this Mortgage shall have been satisfied and released of record and the releasing of this Mortgage shall act as a revocation of this power of attorney and assignment of rents. Mortgagee shall have and hereby expressly reserves the right and privilege (but assumes no obligation) in the event of a Default to demand, collect, sue for, receive and recover all rents, profits, revenues, royalties, bonuses, rights and benefits under any and all oil, gas, or mineral leases of the premises, or any part thereof, now existing or hereafter made, and apply the same upon the Liabilities hereby secured, either before or after default hereunder.

Nothing herein contained shall be construed as constituting the Mortgagee as mortgagee-in-possession in the absence of the taking of actual possession of the premises.

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the Mortgagee. In the exercise of the powers herein granted the Mortgagee, no liability shall be asserted or enforced against the Mortgagee, all such liability being expressly waived and released by Mortgagor.

TO HAVE AND TO HOLD the premises, properties, rights and privileges hereby conveyed or assigned, unto Mortgagee, its successors and assigns, forever for the uses and purposes herein set forth. Mortgagor hereby releases and waives all rights under and by virtue of the Homestead Exemption Laws of the State of Illinois, and Mortgagor hereby covenants that, at the time of the ensembling and delivery of these presents, Mortgagor is well seized of said real estate and premises in fee simple, and with full legal and equitable title to the mortgaged property, with good right, full power and lawful authority to sell, assign, convey and mortgage the same, and that it is free and clear of encumbrances, except for encumbrances as listed on Exhibit B attached hereto and incorporated herein ("Permitted Encumbrances"), and that Mortgagor will forever defend the same against all lawful claims.

The following provisions shall constitute an integral part of this Mortgage:

1. Payment of Indebtedness and Performance of Covenants. Mortgagor agrees to pay, when due or declared due, all of the Liabilities secured hereby and to duly and punctually and observe all of the terms, provisions, conditions, covenants and agreements on Mortgagor's part to be performed or observed as provided in the Note, this Mortgage and all other documents which evidence, secure or guarantee the liabilities hereby secured.

2. Representations. Mortgagor hereby covenants and represents that:

(a) Mortgagor is duly authorized to make and enter into this Mortgage and to carry out the transactions contemplated herein.

(b) This Mortgage has been duly executed and delivered pursuant to authority legally adequate therefore: Mortgagor has been and is authorized and empowered by all necessary persons having the power of direction over it to execute and deliver said instrument; said instrument is a legal, valid and binding obligation of Mortgagor, enforceable in accordance with its terms, subject, however, to bankruptcy and other law, decisional or statutory, of general application affecting the enforcement of creditors' rights, and to the fact that the availability of the remedy of specific performance or of injunctive relief in equity is subject to the discretion of the court before which any proceeding therefore may be brought.

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(c) Mortgagor is not now in default under any instruments or obligations relating to the premises and no party has asserted any claim of default against Mortgagor relating to the premises.

(d) The execution and performance of this Mortgage and the consummation of the transactions hereby contemplated will not result in any breach of, or constitute a default under, any mortgage, lease, bank loan, or credit agreement, trust indenture, or other instrument to which Mortgagor is a party or by which it may be bound or affected; nor do any such instruments impose or contemplate any obligations which are or may be inconsistent with any other obligations imposed on Mortgagor under any other instrument(s) hereto for or hereafter delivered by Mortgagor.

(e) There are not actions, suits or proceedings (including, without limitation, any condemnation or bankruptcy proceedings) pending or threatened against or affecting Mortgagor or the premises, or which may adversely affect the validity or enforceability of this Mortgage, at law or in equity, or before or by any governmental authority; Mortgagor is not in default with respect to any writ, injunction, decree or demand of any court or any governmental authority affecting the premises.

(f) Mortgagor has made a physical investigation of the premises and such other inquiry as may be reasonable, including but not limited to the previous uses of the Premises, and no Environmental Conditions (as defined in section 3(c) hereof) are present on or affect the premises, except as set forth in that certain Environment Report dated September 6, 1989, from O'Brien and Associates, Inc., a copy of which was provided to Mortgagee prior to the date hereof.

(g) To the best of its knowledge, all statements, financial or otherwise, submitted to Mortgagee in connection with this transaction are true and correct in all material respects and fairly present the financial condition of the parties or entities covered by such statements as of the date thereof.

**3. Maintenance, Repair, Compliance with Law, etc.**

(a) Mortgagor agrees: (i) not to abandon the premises; (ii) to keep the premises in good, safe and insurable condition and repair and not to commit or suffer waste; (iii) to refrain from impairing or diminishing the value of this Mortgage; and (iv) to cause the premises to be managed in a competent and professional manner.

(b) Without the prior written consent of Mortgagee, Mortgagor shall not cause, suffer or permit any material alterations of the premises except as required

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by law or ordinance or as approved by Mortgagee pursuant to those certain plans and specifications of F/W Associates In Architecture, LTD. for construction of a residence on the premises; (ii) change in the intended use or occupancy of the premises for which the improvements were constructed, including without limitation any change which would increase any fire or other hazard; (iii) change in the identity of the person or firm responsible for managing the premises; (iv) zoning reclassification with respect to the premises; (v) unlawful use of, or nuisance to exist upon, the premises; (vi) granting of any easements, licenses, covenants, conditions or declarations of use against the premises; or (vii) execution by Mortgagor of any leases without prior written consent of Mortgagee.

(c) With the exception of radon, Mortgagor agrees not to cause or permit any toxic or hazardous substance or waste, or underground storage tanks, or any other pollutants which could be detrimental to the premises, human health, or the environment, or that would violate any local, state or federal laws or regulations (collectively, "Environmental Conditions") to be present on or affect the premises. If Mortgagee determines that Environmental Conditions either do or may exist at the premises, or if Mortgagor causes or permits Environmental Conditions to be present on or affect the premises. Mortgagor agrees to indemnify, defend and save Mortgagee, its successors and assigns, harmless, from and against the following: (i) any liability, loss, cost, damage or expense (including, without limitation, reasonable attorneys' fees and expenses) arising from the imposition or recording of a lien, the incurrence of any clean up and removal costs under any hazardous waste, environmental protection, spill compensation, clean air and water, or other local state or federal law (collectively, the "Environmental Laws") with respect to the premises, or liability to any third party in connection with any violation of the Environmental Laws or other action by Mortgagor or its agents, and (ii) any liability, loss, cost, damage or expense arising from any failure or defect in title occasioned by any of the applicable Environmental Laws. See Insert 1.

#### 4. Taxes, Liens.

(a) Mortgagor agrees to pay, not later than the due date and before any penalty or interest attaches, all general taxes and all special taxes, special assessments, water, drainage and sewer charges and all other charges, of any kind whatsoever, ordinary or extraordinary, which may be levied, assessed or imposed on or against the premises and, at the request of Mortgagee, to exhibit to Mortgagee, official receipts evidencing such payments.

(b) Mortgagor shall not create or suffer or permit

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Notwithstanding the foregoing, Mortgagor shall have no liability under this Section 3(c) for any Environmental Condition caused by or aggravated by Mortgagee, or occurring after Mortgagee, any purchaser at a foreclosure sale or any grantee under a deed in lieu of foreclosure, has taken over possession of the premises.

All such liability, loss, cost, damage or expense arising from the provisions of this Section 3(c) shall become additional Liabilities secured hereby immediately due and payable, with interest thereon at the Interest Rate when paid or incurred by Mortgagee.

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any mortgage, lien, charge or encumbrance to attach to or be filed against the premises, whether such lien or encumbrance is inferior or superior to the lien of this Mortgage, including mechanic's liens, materialmen's liens, or other claims for lien made by parties claiming to have provided labor or materials with respect to the premises and excepting only the lien of real estate taxes and assessments not due or delinquent, Permitted Encumbrances, and any liens and encumbrances of Mortgage. See Insert 2.

5. Change in Tax Laws. Mortgagor agrees that, if the United States or the State of Illinois or any of their subdivisions having jurisdiction shall levy, assess, or charge any tax, assessment or impositions upon this Mortgage or the credit or indebtedness secured hereby or the interest of Mortgagee in the premises or upon Mortgagee by reason of or as holder of any of the foregoing then, Mortgagor shall pay (or reimburse Mortgagee for) such taxes, assessments or impositions, and, unless all such taxes, assessments and impositions are paid or reimbursed by Mortgagor when and as they become due and payable, all sums hereby secured shall become immediately due and payable, within thirty (30) days after written demand by Mortgagee to Mortgagor, at the option of Mortgagee, notwithstanding anything contained herein or in any law heretofore or hereafter enacted.

6. Restrictions on Transfer. Mortgagor shall not, without the prior written consent of Mortgagee, create, effect, contract for, consent to, suffer or permit any "Prohibited Transfer" (as defined herein). Any conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation (or any agreement to do any of the foregoing) of any of the following properties, rights or interests which occurs, is granted, accomplished, attempted or effectuated without the prior written consent of Mortgagee shall constitute a "Prohibited Transfer":

(a) the premises or any part thereof or interest therein, excepting only the sale of the premises pursuant to the terms of that certain real estate sale contract dated August 2, 1991 and sales or other dispositions of Collateral (herein called "Obsolete Collateral") no longer useful in connection with the operation of the premises, provided that prior to the sale or other disposition thereof, such Obsolete Collateral has been replaced by Collateral of at least equal value and utility which is subject to the lien hereof with the same priority as with respect to the Obsolete Collateral;

(b) all or any portion of the beneficial interest or power of direction in or to the trust under which Mortgagor is acting, if Mortgagor is a Trustee;

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## Insert 2

Notwithstanding the foregoing, Mortgagor shall have the right to contest any such lien so long as it provides Mortgagee with any of the following:

(i) Indemnification over such lien reasonably satisfactory to Mortgagee in its sole discretion;

(ii) a bond for the benefit of Mortgagee in an amount reasonably determined by Mortgagee and with a company reasonably satisfactory to Mortgagee; or

(iii) Insurance for the benefit of Mortgagee over such lien in an amount reasonably determined by Mortgagee and with a company reasonably satisfactory to Mortgagee.

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(c) any shares of capital stock of a corporate Mortgagor, a corporation which is a beneficiary of a land trust whose trustee is the Mortgagor, a corporation which is a general partner in a partnership Mortgagor, a corporation which is a general partner in a partnership beneficiary of a trustee Mortgagor or a corporation which is the owner of substantially all of the capital stock of any corporation described in this subparagraph (other than the shares of capital stock of a corporate trustee or a corporation whose stock is publicly traded on a national securities exchange or on the National Association of Securities Dealers' Automated Quotation System); or

(d) all or any part of the partnership or joint venture interest, as the case may be, of any Mortgagor or any direct or indirect beneficiary of a Trustee Mortgagor if Mortgagor or such beneficiary is a partnership or a joint venture: in each case whether any such conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest, encumbrance or alienation is effected directly, indirectly, voluntarily or involuntarily, by operation of law or otherwise. Mortgagor acknowledges that Mortgagee shall be under no obligation to consent to any of the foregoing Prohibited Transfers and that any such consent may be subject to changes in the applicable interest rate charged in the Note, the imposition of a fee or to such other modifications to the terms and conditions in the Note, this Mortgage or any other security documents as Mortgagee in its sole discretion may determine.

7. Insurance.

(a) Mortgagor agrees to maintain in force at all times : (i) fire and extended coverage insurance (including without limitation, windstorm, earthquake, explosion, flood and such other risks covered by the so-called "all risks" coverage on the premises in an amount not less than one hundred percent (100%) of the full insurable value of the mortgaged premises; (ii) comprehensive public liability against death, bodily injury and property damage in an amount not less than \$1,000,000.00 single limit coverage; (iii) rental or business interruption insurance in amounts sufficient to pay, for a period of up to four (4) months, all amounts required to be paid by Mortgagor pursuant to the Note and this Mortgage; and (iv) the types and amounts of insurance that are customarily maintained by owners or operators of like properties.

(b) Mortgagor will also maintain Flood Insurance, required by the Mortgagee, pursuant to a designation of the area in which the mortgaged premises are located as flood prone or a flood risk area, as defined by the Flood Disaster Protection Act of 1973, as amended, in an amount to be determined by the Mortgagee from time to time, when

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appropriate, as well as comply with any additional requirements of the National Flood Insurance Program as set forth in said Act.

(c) All such insurance shall be written by companies and on forms with endorsements reasonably acceptable to Mortgagee, all with suitable loss-payable and standard non contribution mortgagee clauses in favor of Mortgagee attached. Certified copies of the policies evidencing the same shall be deposited with Mortgagee. All said policies shall provide for written notice to Mortgagee of their expiration or modification at least thirty (30) days prior to such event occurring. Not less than thirty (30) days prior to the expiration of any such policy, a certified copy of an appropriate renewal policy shall be deposited with Mortgagee. In case of loss, Mortgagee is authorized to collect all insurance proceeds and apply them, at its option, to the reduction of the Liabilities hereby secured, whether due or not then due, or, at Mortgagee's option, may allow Mortgagor to use such money, or any part thereof, in repairing the damage or restoring the improvements. Notwithstanding the foregoing, Mortgagee shall not apply any insurance proceeds to reduce the Liabilities unless Mortgagor is in default under the terms of this Mortgage, provided Mortgagor agrees to apply the insurance proceeds to the restoration of the premises.

(d) Mortgagor shall notify Mortgagee, in writing, of any loss to the premises covered by insurance, and Mortgagor hereby directs each insurance company to make payment for such loss directly and solely to Mortgagee; and Mortgagor agrees that any payment which is delivered, for any reason, to Mortgagor shall be held in trust for Mortgagee and promptly delivered in the form received (except for any necessary endorsements thereon) to Mortgagee, provided, however, Mortgagee agrees to disburse all insurance proceeds in accordance with Section 7(c) hereof.

**8. Compliance with Laws.** Mortgagor agrees that it will comply with all restrictions affecting the premises and with all laws, ordinances, acts, rules, regulations and orders of any legislative, executive, administrative or judicial body, commission or officer (whether federal, state or local) exercising any power of regulation or supervision over Mortgagor, or any part of the premises, whether the same be directed to the repair thereof, manner of use thereof, structural alteration of buildings located thereon, or otherwise.

**9. Stamp Tax.** Mortgagor agrees that if the United States Government or any department, agency or bureau thereof or the State of Illinois or any of its subdivisions shall at any time require documentary stamps to be affixed to the Mortgage, Mortgagor will, upon request, pay for the stamp.

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the required amount and deliver them to Mortgagee, and Mortgagee agrees to indemnify Mortgagee against liability on account of such documentary stamps, whether such liability arises before or after payment of the Liabilities and regardless whether this Mortgage shall have been released.

10. Financial Statements. If required by Mortgagee, Mortgagee will, within ninety (90) days after the end of each fiscal year of Mortgagee, furnish to Mortgagee, its and any guarantor's financial and operating statements for such fiscal year, including, but without limitation, a balance sheet and supporting schedules, detailed statement of income and expenditures and supporting schedules, including depreciation schedules and federal income tax figures, all prepared, with the exception of disclosure of footnotes, in accordance with generally accepted principles of accounting consistently applied. Such financial and operating statements shall be prepared by an accountant, the identity of which is reasonably acceptable to Mortgagee, and in such form as may be reasonably acceptable to Mortgagee, and Mortgagee may, by notice in writing to Mortgagee, at Mortgagee's expense, audit the respective books and records at the premises, except if a reasonable basis for such audit did not exist, such audit shall be at Mortgagee's expense.

11. Deposits for Taxes and Insurance Premiums. Upon written request by the Mortgagee, Mortgagee agrees to thereafter make monthly deposits in an account, which account shall be pledged to Mortgagee, at a bank or similar financial institution acceptable to Mortgagee, of an amount equal to the sum of 1/12th of the annual general real estate taxes levied on the premises and 1/12th of the annual premium required to maintain insurance in force on the premises in accordance with the provisions of this Mortgage, the amount of such taxes and premiums, if unknown, to be estimated on the basis of the previous year's taxes or premiums, if any, or by such person or corporation as is acceptable to Mortgagee. Mortgagee shall provide Mortgagee with the original real estate tax bill or insurance invoice not later than ten (10) days before the payment is due and shall concurrently deposit in said account an amount equal to the difference between the amount available in the aforesaid escrow account for such payment (giving effect to other taxes or expenses which are also to be paid from said account) as shown on Mortgagee's records and the amount required to be paid. Provided that no Default has occurred after expiration of applicable cure periods, funds in such account (including the supplemental deposits required by the preceding sentence) shall be used by Mortgagee to pay such taxes and premiums on their respective due dates. From and after the occurrence of a Default under this Mortgage after expiration of applicable cure periods,

Mortgagee will pay such funds to Mortgagee for application

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the Liabilities. Notwithstanding the foregoing, Mortgagee shall not require that Mortgagor make monthly deposits for real estate taxes and insurance provided Mortgagor is not in default in the payment of real estate taxes and insurance as required hereunder. Mortgagee, in its sole discretion, may waive from time to time the requirement that such deposits be made, and if Mortgagee shall at any time waive such requirement, Mortgagor shall furnish Mortgagee with copies of paid tax receipts and insurance premium receipts not later than fifteen (15) days before the payment was due.

12. Leases. Mortgagor agrees faithfully to perform all of its obligations under all present and future leases or other agreements relative to the occupancy of the premises at any time assigned to Mortgagee by separate instrument as additional security, and to refrain from any action or inaction which would result in termination of any such leases or agreements or in the diminution of the value thereof or of the rents or revenues due thereunder. Mortgagor further agrees that any lease of the premises made after that date of recording of this Mortgage shall contain a covenant to the effect that such lessee shall, at Mortgagee's option, agree to attorn to Mortgagee as lessor and, upon demand, to pay rent to Mortgagee.

13. Indemnification. Mortgagor agrees to indemnify Mortgagee from all loss, damage and expense, including reasonable attorneys' and paralegals' fees and expenses and the costs of any settlement or judgment, incurred in connection with any suit or proceeding in or to which Mortgagee may be made a party for the purpose of protecting the lien of this Mortgage, and all such fees, expenses and costs shall be additional Liabilities secured hereby.

14. Condemnation. Mortgagor agrees that if at any time it shall become aware of the institution of condemnation proceedings against the premises or any part thereof, it shall immediately inform Mortgagee of the pendency of such proceedings. Mortgagee may, at its option, participate in such proceedings, and Mortgagor agrees to provide Mortgagee with any evidence that Mortgagor possesses in connection with such proceedings. Mortgagor hereby assigns to Mortgagee, as additional security, all awards of damage resulting from condemnation proceedings or the taking of or injury to the premises for public use, and Mortgagor agrees that the proceeds of all such awards shall be paid to Mortgagee and may be applied by Mortgagee, at its option, after the payment of all its expenses in connection with such proceedings, including reasonable attorneys' fees and expenses, to the reduction of the Liabilities hereby secured, and Mortgagee is hereby authorized, on behalf of and in the name of Mortgagor, to execute and deliver valid acquittance for and to appeal from any such award. Notwithstanding anything to the contrary contained herein, provided Mortgagor is not then in Default.

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hereunder, Mortgagee agrees to apply the proceeds of all such awards to the restoration of the premises, provided Mortgagor agrees to apply such proceeds to the restoration of the premises.

### 15. Mortgagee's Performance of Mortgagor's Obligations

Mortgagor agrees that, from and after the occurrence of a default under this Mortgage, Mortgagee may, but need not, make any payment or perform any act hereinbefore required of Mortgagor, in any form and manner deemed expedient after reasonable inquiry into the validity thereof. By way of illustration and not in limitation of the foregoing, Mortgagee may, but need not, (a) make full or partial payments of insurance premiums which are unpaid by Mortgagor, coordinate liens or encumbrances, if any, and (b) purchase, discharge, compromise or settle any tax lien or any other lien, encumbrance, suit, proceeding, title or claim thereof, or (c) redeem all or any part of the premises from any tax or assessment. All money paid for any of the purposes herein authorized and all other moneys advanced by Mortgagee to protect the premises and the lien hereof shall be additional Liabilities secured hereby and shall become immediately due and payable without notice and shall bear interest at 15% ("Interest Rate") until paid to Mortgagee in full. In making any payment hereby authorized relating to taxes, assessments or prior or coordinate liens or encumbrances, Mortgagee shall be the sole judge of the legality, validity and priority thereof and of the amount necessary to be paid in satisfaction thereof.

16. Inspection of Books and Records. Mortgagor, or any person designated by Mortgagee in writing, shall have the right, from time to time hereafter, to call at the premises (or at any other place where information relating thereto is kept or located) during reasonable business hours upon reasonable advance notice and in such a manner so as not to interfere with Mortgagor's operations, and, without hindrance or delay, to make such inspection and verification of the premises, and the affairs, finances and business of Mortgagor (including all books, records and documents relating thereto) in connection with the premises, as Mortgagee may consider reasonable under the circumstances, and to discuss the same only with the President of Mortgagor.

17. Default. Any of the following occurrences or acts shall constitute an event of default under this Mortgage ("Default"): (i) the occurrence of a "Default" (as that term is defined in the Note) (whether in payment or otherwise) under the Note or any loan agreement, security agreement or other agreement securing the payment of the Note which is not cured under applicable grace periods, if any; (ii) Mortgagor

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(regardless of the pendency of any bankruptcy, reorganization, receivership, insolvency or other proceedings, at law, in equity or before any administrative tribunal, which have prevented or might have the effect of preventing Mortgagor from complying with the terms of this Mortgage) shall fail to observe or perform any of Mortgagor's covenants, agreements or obligations under this Mortgage, and such Default shall continue for thirty (30) days after written notice thereof from Mortgagee; (iii) a Default shall occur under any other document, agreement or instrument between Mortgagor and Mortgagee after expiration of all applicable cure periods, provided, however, a default under the loans for lots 5 and 10 in Whisperwoods Subdivision shall not cause Mortgagor to be in default under the terms of this Mortgage; (iv) the occurrence of a Prohibited Transfer; (v) the occurrence of a "Default" as that term is defined in the applicable instrument (whether in payment or otherwise) under the indebtednesses pertaining to the Permitted Encumbrances after expiration of all applicable cure periods or (vi) the premises or a substantial part thereof shall have been abandoned for thirty (30) consecutive days. Notwithstanding the foregoing, if any such default occurs that is not susceptible of cure within thirty (30) days after written notice, such failure shall not constitute a Default hereunder, provided, and so long as, Mortgagor has commenced to cure and is diligently and in good faith proceeding with the completion of such cure. If any such Default shall have occurred after the expiration of all applicable cure periods, then, to the extent permitted by applicable law, the following provisions shall apply:

(a) All sums secured hereby shall, at the option of Mortgagee, become immediately due and payable without presentment, demand or further notice.

(b) It shall be lawful for Mortgagee to (i) immediately sell the premises either in whole or in separate parcels, as prescribed by Illinois law, under power of sale, which power is hereby granted to Mortgagee to the full extent permitted by Illinois law, and thereupon, to make and execute to any purchaser(s) thereof deeds of conveyance pursuant to applicable law or (ii) immediately foreclose this Mortgage. The court in which any proceeding is pending for the purpose of foreclosure of this Mortgage may, at once or at any time thereafter, either before or after sale, without notice and without requiring bond, and without regard to the solvency or insolvency or any person liable for payment of the Liabilities secured hereby, and without regard to the then value of the premises or the occupancy thereof as a homestead, appoint a receiver (the provisions for the appointment of a receiver and assignment of rents being an express condition upon which the loan hereby secured is made) for the benefit of Mortgagee, with power to collect the rents, issues and profits of the premises, due and to become

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due, during such foreclosure suit and the full statutory period of redemption notwithstanding any redemption. The receiver, out of such rents, issues and profits when collected, may pay costs incurred in the management and operation of the premises, prior and coordinate liens, if any, and taxes, assessments, water and other utilities and insurance, then due or thereafter accruing, and may make and pay for any necessary repairs to the premises, and may pay all or any part of the Liabilities or other sums secured hereby or any deficiency decree entered in such foreclosure proceedings.

(c) Mortgagee shall, at its option, have the right, acting through its agents or attorneys, with process of law, to enter upon and take possession of the premises, expel and remove any persons, goods, or chattels occupying or upon the same, to collect or receive all the rents, issues and profits thereof and to manage and control the same, and to lease the same of any part thereof, from time to time, and after deducting all reasonable attorneys' fees and expenses, and all reasonable expenses incurred in the protection, care, maintenance, management and operation of the premises, apply the remaining net income upon the liabilities or other sums secured hereby or upon any deficiency decree entered in any foreclosure proceedings.

(d) If more than one property, lot or parcel is covered by this Mortgage, and if this Mortgage is foreclosed upon, or judgment is entered upon any obligation secured hereby, or if Mortgagee exercises its power of sale, execution may be made upon or Mortgagee may exercise its power of sale against any one or more of the properties, lots or parcels and not upon the others, or upon all or such properties or parcels, either together or separately, and at different times or at the same time, and execution sales or sales by advertisement may likewise be conducted separately or concurrently, in each case at Mortgagee's election.

(e) In the event of a foreclosure of this Mortgage, the Liability then due the Mortgagee shall not be merged into any decree of foreclosure entered by the court, and Mortgagee may concurrently or subsequently seek to foreclose one or more mortgages which also secure said Liabilities.

**18. Foreclosure.** In any foreclosure of this Mortgage by action, or any sale of the premises by advertisement, there shall be allowed (and included in the decree for sale in the event of a foreclosure proceeding of sale:

(a) all of the Liabilities and others sums secured hereby which then remain unpaid;

(b) all other items advanced or paid by Mortgagee

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pursuant to this Mortgage, with interest thereon at the Interest Rate from the date of advertisement; and

(c) all court costs, reasonable attorneys' and paralegals' fees and expenses, appraiser's fees, advertising costs, notice expenses, expenditures for documentary and expert evidence, stenographer's charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all title searches and examinations, title insurance policies, and similar data with respect to title which Mortgagee may deem necessary. All such expenses shall become additional Liabilities secured hereby and immediately due and payable, with interest thereon at the Interest Rate, when paid or incurred by Mortgagee in connection with any proceedings, including but not limited to probate and bankruptcy proceedings, to which Mortgagee shall be a party, either as plaintiff, claimant or defendant, by reason of this Mortgage or any indebtedness hereby secured or in connection with the preparations for the commencement of any suit for the foreclosure, whether or not actually commenced, or sale by advertisement. The proceeds of any sale (whether through a foreclosure proceeding or Mortgagee's exercise of the power of sale) shall be distributed and applied to its items described in (a), (b) and (c) of this paragraph, as Mortgagee may in its reasonable judgement determine, and any surplus of the proceeds of such sale shall be paid to Mortgagor.

19. Rights Cumulative. Each remedy or right of Mortgagee shall not be exclusive of but shall be in addition to every other remedy or right now or hereafter existing at law or in equity. No delay in the exercise or omission to exercise any remedy or right accruing on any Default or acquiescence therein, nor shall it affect any subsequent Default of the same or in different nature.

20. Execution of Additional Documents. Mortgagor agrees that, upon request of Mortgagee from time to time, it will execute, acknowledge and deliver all such additional instruments and further assurances of title and will do or cause to be done all such further acts and things as may reasonably be necessary to fully effectuate the intent of this Mortgage.

21. Waiver of Right of Redemption and Reinstatement. Mortgagor represents that it has been authorized to, and Mortgagor does hereby waive (to the full extent permitted under Illinois law) any all statutory or equitable rights of redemption from sale, for reinstatement or any other right under any "Moratorium Law" on behalf of Mortgagor and each and every person, except decree or judgement creditors of Mortgagor, acquiring any interest in or title to the premises subsequent to the date hereof.

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22. Representation of Title. At the time of the delivery of these presents, the Mortgagor is well seized of an indefeasible estate in fee simple in the portion of the premises which constitutes real property and owns good title to the portion of the premises which constitutes personal property and has good right, full power and lawful authority to convey and mortgage and grant a security interest in the same, in the manner and form aforesaid; that the same is free and clear of all liens, charges, easements, covenants, conditions, restrictions and encumbrances whatsoever, excluding Permitted Encumbrances, and that Mortgagor shall and will forever defend the title to the premises against the claims of all persons whomsoever.

23. Future Advances. At all times, regardless of whether any loan proceeds have been disbursed, this Mortgage secure as part of the liabilities the payment of any and all loan commissions, service charges, liquidated damages, reasonable attorneys' fees, expenses and advances due to or incurred by Mortgagee in connection with the Liabilities, all in accordance with the Note, this Mortgage, and any other security documents.

24. Non-Marshalling Provision. Mortgagor hereby agrees that Mortgagee shall have no obligation to marshal any collateral which secures the Liabilities, and it shall require any other of its creditors to waive any such marshalling obligation.

25. Miscellaneous.

(a) Mortgagor agrees that, without affecting the liability of any person for payment of the Liabilities secured hereby or affecting the lien of this Mortgage upon the premises or any part thereof (other than persons or property explicitly released as a result of the exercise by Mortgagee of its rights and privileges hereunder), Mortgagee may at any time and from time to time, on request of the Mortgagor, without notice to any person liable for payment of any Liabilities secured hereby, extend the time or agree to alter the terms of payment of such Liabilities.

(b) Mortgagor certifies and agrees that the proceeds of the Note will be used for the purposes specified in the Illinois Revised Statutes, Chapter 17, Section 6404 (or any substitute, amended or replacement statute), and that the principal obligation secured hereby constitutes a "business loan" coming within the definition and purview of said section.

(c) Mortgagor agrees that this Mortgage is to be construed and governed by the laws of the State of Illinois. Wherever possible, each provision of this Mortgage shall be interpreted in such manner as to be effective and valid under

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applicable law, but if any provision of this Mortgage shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Mortgage.

(d) Upon full payment of all sums secured hereby or upon application on the Liabilities of the proceeds of any sale of the premises in accordance with the provisions of this Mortgage, at the time and in the manner provided, this conveyance shall be null and void and, upon demand therefore following such payment, a satisfaction of mortgage shall be provided by Mortgagee to Mortgagor.

(e) This Mortgage shall be binding upon the Mortgagor and upon the successors, assigns and vendees of the Mortgagor and shall inure to the benefit of the Mortgagee's successors and assigns. All references herein to the Mortgagor and to the Mortgagee shall be deemed to include their successors and assigns. Mortgagor's successors and assigns shall include, without limitation, a receiver, trustee or debtor in possession of or for the Mortgagor.

(f) All notices, demands, consents, requests, approvals, undertakings or other instruments required or permitted to be given in connection with this Mortgage shall be in writing and shall be sent by United States registered or certified mail, recognized overnight courier or messenger service, or telecopy addressed to the address shown on page one hereof, or such other address as was last specified by either party, with a copy to Rudnick & Wolfe, 203 North LaSalle Street, Suite 1800, Chicago, Illinois 60601. Attention: Bruce D. Loring, Esq.

(g) Time is of the essence of the Note, this Mortgage, and any other document or instrument evidencing or securing the Liabilities.

IN WITNESS WHEREOF, this instrument is executed by Mortgagor as of the day and year first above written.

**BORROWER:**

Northern Illinois Construction Co.,  
an Illinois Corporation

By: 

Ralph E. Harwood,  
Its President

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73-43-8388-1

STATE OF ILLINOIS     )  
                          )     SS.  
COUNTY OF LAKE        )

I, the Undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT Ralph E. Harwood, President of Northern Illinois Construction Co., an Illinois Corporation, 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, sealed and delivered the said instrument as his free and voluntary act, for the uses and purposes therein set forth and that the delivery of this Mortgage has been duly authorized and constitutes a valid and binding act of the Corporation.

GIVEN under my hand and Notarial Seal, this 13<sup>th</sup> day of January, 1992, A.D.

Debra L. Rutledge  
Notary Public

OFFICIAL SEAL  
DEBRA L. RUTLEDGE  
NOTARY PUBLIC STATE OF ILLINOIS  
MY COMMISSION EXP. JULY 25, 1995

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## EXHIBIT A

TO

MORTGAGE DATED January 13, 1992 ,

### LEGAL DESCRIPTION

Lot 8 in Whisperwoods of Northbrook, being a Subdivision of the West half of the Northwest Quarter of the Southeast Quarter of Section 17, Township 42 North, Range 12, East of the Third Principal Meridian (except therefrom the North 821.50 feet thereof), according to the plat thereof, recorded with the Office of the Recorder of Deeds of Cook County, Illinois on October 17, 1989, as Document Number 89491600.

Commonly Known As: Whisperwoods of Northbrook  
3126 Whisperwoods Court  
Northbrook, Illinois

F.I.N.

This document was prepared by and to be returned after recording to :

Paul P. Bouchard  
First Midwest Bank, N.A.  
3303 S. Sheridan Road  
Zion, Illinois 60099

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