

# UNOFFICIAL COPY

This Instrument Executed in Duplicate.

## CONSTRUCTION MORTGAGE, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT

THIS CONSTRUCTION MORTGAGE, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT, made this 24th day of DECEMBER, 1991, between NBD BANK EVANSTON, N.A., having its principal office and place of business at 1603 Orrington Avenue, Evanston, Illinois, 60204 ("Lender"), and THE MEAGHER-MILLER TRUST dated October 17, 1991 ("Borrowers").

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COOK COUNTY RECORDER

W I T N E S S E T H :

WHEREAS, Borrowers have executed and delivered to Lender a Secured Promissory Note of even date herewith payable to Lender in the principal amount of FIVE HUNDRED FIFTY FIVE THOUSAND and 00/100 DOLLARS (\$555,000.00) or such lesser amount as may be disbursed thereon (which Note, together with all Notes issued in substitution or exchange therefore, and as any of the foregoing may from time to time be amended, is hereinafter called the "Note"); and

WHEREAS, the Lender is making a Construction Loan to the Borrowers on the terms specified in the certain Construction Loan Agreement by and between Borrowers and Lender (which agreement as it may be amended from time to time hereafter, is hereinafter called the "Loan Agreement").

WHEREAS, the Lender is desirous of securing the prompt payment of the Note, together with interest and premium, if any, thereon in accordance with the terms of the Note, and any additional indebtedness accruing to the Lender on account of any future payments, advances or expenditures made by the Lender pursuant to the Note, this Mortgage, or Loan Agreement all hereinafter sometimes collectively called "the indebtedness secured hereby";

WHEREAS, as used herein the term "Loan Commencement Date" shall mean the date designated by the Lender on which all conditions contained in the Loan Agreement precedent to Lender's obligation to make said loan shall have been satisfied by Borrowers or waived by the Lender, and in the event that such a date is so established, said loan, except as otherwise provided therein, will mature on the 1ST day of JANUARY, 1993;

NOW, THEREFORE, to secure the performance and observance by the Mortgagor of all of the terms, covenants and conditions in the Note and in this Mortgage contained, and in order to charge the properties, interests and rights hereinafter described with such payment, performance and observance, and for and in consideration of the sum of One Dollar (\$1.00) lawful money of the United States of America to the Borrowers paid by the Lender

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WITHOUT limitation of the foregoing, the Mortgagors hereby further grant unto the Lender, pursuant to the provisions of the Uniform Commercial Code of the State of Illinois, a security interest in all of the above-described property, which property includes, without limitation, goods which are or are to become fixtures.

THIS MORTGAGE IS GIVEN TO SECURE: (a) payment of the indebtedness secured hereby and (b) performance of each and every of the covenants, conditions and agreements contained in this Mortgage, in the Note, and in any other agreement, document or instrument to which reference is expressly made in this Mortgage or which secures the Note.

IT IS EXPRESSLY understood and agreed that the indebtedness secured hereby will in no event exceed ONE HUNDRED TEN percent (110%) of (i) the total face amount of the note plus (ii) the total interest which may hereafter accrue under the note on such fact amount.

PROVIDED, HOWEVER, that these presents are upon the condition that, if the Borrowers shall pay or cause to be paid to the Lender the principal and interest payable pursuant to the Note, at the times and in the manner stipulated therein and herein, all without any deduction or credit for taxes or other similar charges paid by the Borrowers, and shall keep, perform and observe all and singular the covenants and promises in the Loan Agreement Note, and in this Mortgage expressed to be kept, performed and observed by and on the part of the Borrowers, then this Mortgage shall cease, terminate and void, but shall otherwise remain in full force and effect;

AND the Borrowers covenants and agrees with the Lender that:

## ARTICLE 1

1.01 Performance of Note and Mortgage. The Borrowers will perform, observe and comply with all of the provisions hereof and of the Note and will duly and punctually pay to the Lender the sum of money expressed in the Note with interest thereon at the times and in the manner provided in the Note and all other sums required to be paid by the Borrowers pursuant to the provisions of this Mortgage, all without any deductions or credit for taxes or other similar charges paid by the Borrowers.

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1.02 Warranty 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 Mortgaged Property which constitutes real property and owns good title to the portion of the Mortgaged Property which constitutes personal property, subject only to the lien of general real estate taxes not yet due and payable, and has good right, full power and lawful authority to convey, 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, matters and fixtures, security agreements, conditional sales contracts and anything of a similar nature; and that the Mortgagor shall and will warrant and forever defend the title to the Mortgaged Property against the claims of all persons whomsoever.

1.03 Tax and Insurance Deposits. If required by the lender, the Borrowers will pay to the Lender on the first day of each month, together with and in addition to the payment required under the Note until all indebtedness secured hereby is fully paid, an amount equal to one-twelfth (1/12) of the yearly (i) taxes, assessments and other similar charges as estimated by the Lender to be sufficient to enable the Lender to pay at least thirty (30) days before they become due, all taxes, assessments and other similar charges against the Mortgaged Property or any part thereof, and (ii) premiums for insurance required by Paragraph 1.06 hereof as estimated by the Lender to be sufficient to enable the Lender to pay at least thirty (30) days before they become due all such premiums for insurance. Such added payments shall not be, nor be deemed to be, trust funds, but may be commingled with the general funds of the Lender or its designee, and no interest shall be payable in respect thereof. Payment by the Lender for such purposes may be made by the Lender at its discretion even though subsequent owners of the Mortgaged Property may benefit thereby. In refunding (at its election) any of the amounts held by the Lender pursuant to this Paragraph 1.03, the Lender may deal with whomsoever is represented to be the owner of the Mortgaged Property at such time. Upon demand of the Lender, the Borrowers agree to deliver to the Lender such additional monies as are necessary to make up any deficiencies in the amounts necessary to enable the Lender to pay such taxes, assessments and other similar charges and insurance premiums. The Lender may apply to the reduction of the sums secured hereby, in such manner as the Lender shall determine, any amount held by the Lender hereunder.

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## 1.04 Taxes, Liens and Other Charges.

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(a) The Borrowers will pay promptly, when and as due, and will promptly exhibit to the Lender receipts for the payment of, all taxes, assessments, water rates, license fees, dues, charges, fines and impositions of every nature whatsoever charged, imposed, levied or assessed or to be charged, imposed, levied or assessed upon or against the Mortgaged Property or any part thereof; or upon the interest of the Lender in the Mortgaged Property (other than any of the same for which amounts have been paid to the Lender pursuant to the same for which amounts have been paid to the Lender pursuant to Paragraph 1.03 and for which the Borrowers furnished bills at least thirty (30) days prior to the date the same are due), as well as all income taxes, assessments and other governmental charges lawfully levied and imposed by the United States of America or any state, county, municipality or other taxing authority in respect to the Mortgaged Property or any part thereof, or any charge which, if unpaid, would or could become a lien or charge upon the Mortgaged Property, or any part thereof.

(b) The Borrowers will not suffer any mechanic's, laborer's, materialmen's statutory or other lien or any security interest or encumbrance to be created or to remain outstanding upon any of the Mortgaged Property.

(c) In the event of the passage of any state, federal, municipal or other governmental law, order, rule or regulation, subsequent to the date hereof, in any manner changing or modifying the laws now in force governing the taxation of mortgages or debts secured by mortgages or the manner of collecting taxes so as to affect adversely the Lender, all sums secured by this Mortgage and all interest accrued thereon shall, at the option of the Lender, become immediately due and payable.

(d) The Borrowers will pay when due any charges for utilities, whether public or private, with respect to the Mortgaged Property or any part thereof and all license fees, rents or other charges for the use of vaults, canopies or other appurtenances to the Mortgaged Property.

(e) Notwithstanding anything in this Mortgage which may or appear to be to the contrary, Borrowers may at Borrowers' sole expense, contest the validity of any tax, assessment or mechanic's lien on the premises and the failure of Borrowers to discharge such taxes, assessments or mechanic's liens as herein provided during such contest, provided such contest shall be diligently prosecuted, shall not be deemed a breach of this Mortgage, and Lender shall not pay any such tax, assessment or

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mechanic's lien if such payment would prejudice any such legal proceeding, provided (i) that Lender shall be furnished with notice of any such contest, (ii) that such proceedings stay the enforcement or collection of any such tax, assessment or lien and (iii) that within thirty (30) days after Borrowers has received notice of such tax, assessment or mechanic's lien, the Borrowers shall furnish to the Lender either (aa) a bond of a surety company satisfactory to the Lender, which shall be in an amount at least equal to One Hundred Twenty-five Percent (125%) of the estimated cost of the discharge of such taxes, assessments or mechanic's liens, including interest and penalties thereon, and shall indemnify the Lender against the cost thereof and against all liability and any damages, interest, penalties and expenses (including but not limited to court costs and legal fees and expenses) resulting from or incurred in connection with such contest or (bb) in place of such bond, other security which, in light of any risks to the Lender which may arise out of such non-payment is, in the Lender's judgment, satisfactory to the Lender.

1.05 No Tax Credits. The Borrowers will not claim or demand or be entitled to receive any credit or credits on the principal or interest payable under the terms of the Note or on any other sums secured hereby, for so much of the taxes, assessments or similar charges assessed against the Mortgaged Property or any part thereof, as are applicable to the indebtedness secured hereby or to the Lender's interest in the Mortgaged Property. No deduction shall be claimed from the taxable value of the Mortgaged Property or any part thereof by reason of the Note or this Mortgage.

1.06 Insurance. The Borrowers will procure for, deliver to and maintain for the benefit of the Lender during the term of this Mortgage, a policy or policies (i) insuring the Mortgaged Property against fire, lightning, vandalism, malicious mischief, all other perils insured against under "extended coverage", and such other insurable perils as the Lender may require, including, without limitation, perils covered under an "additional other perils" endorsement, for at least 90% of the insurable replacement cost of the Mortgaged Property, (ii) affording such other or additional coverage as from time to time may be requested by the Lender, including, without limitation, comprehensive general liability insurance, umbrella liability insurance, and, if any part of the Mortgaged Property is in a flood area (as defined under the Flood Disaster Protection Act of 1973), flood insurance. The Borrowers shall pay for all premiums on such policies and, if amounts have been deposited with the Lender for the payment thereof pursuant to Paragraph 1.03 hereof,



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1.07 Condemnation. If all or any part of the Mortgaged Property shall be damaged, or taken through condemnation (which term, when used in this Mortgage, shall include any damage or taking by any governmental authority and any transfer by private sale in lieu thereof), either temporarily or permanently, the entire indebtedness secured hereby shall, at the Lender's option, become immediately due and payable. The Lender shall be entitled to all compensation, awards and other payments or relief therefor and is hereby authorized at its option to commence, appear in and prosecute in its own or Borrowers' name, any action or proceeding relating to any condemnation, and to settle or compromise any claim in connection therewith. All such compensation, awards, damages, claims, rights, actions, and proceedings, and the rights thereto, are hereby assigned by the Borrowers to the Lender. After deduction from said condemnation proceeds all of its expenses incurred in the collection and administration of such sums, including attorney's fees, the Lender may apply the net proceeds or any part thereof, at its option, either toward restoring the Mortgaged Property or as a credit on any portion of the indebtedness secured hereby selected by it whether then matured or to mature in the future, or for any other purpose or object satisfactory to the Lender without affecting the lien of this Mortgage. The borrower agrees to execute such further assignments of any compensations, awards, damages, claims, rights, action and proceedings as the Lender may require. The Lender shall not be held responsible for any failure to collect any amount in connection with any such proceeding regardless of the cause of such failure.

1.08 Care of the Property.

(a) The Borrowers will preserve and maintain the Mortgaged Property in good condition and repair, will not commit or suffer any waste thereof, and will keep the same in a clean, orderly and attractive condition. The Borrowers will not do or suffer to be done anything which will increase the risk of fire or other hazard to the mortgaged Property or any part thereof.

(b) Except as otherwise provided herein or in the Loan Agreement, no building, structures, improvements, fixtures, personal property or other part of the Mortgaged Property, shall be removed, added to, demolished or altered structurally to any extent or altered non-structurally in any respect without the prior written consent of the lender.

(c) If the Mortgaged Property or any part thereof is damaged by fire or any other cause the Borrower will give immediate written notice of the same to the Lender.



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(d) The Lender or its representative is hereby authorized to enter upon and inspect the Mortgaged Property at any time during normal business hours during the term of this Mortgage.

(e) The Borrowers will promptly comply, and cause the Mortgaged Property and the occupants or users thereof to comply with all present and future laws, ordinances, orders, rules and regulations and other requirements of any governmental authority affecting the Mortgaged Property or any part thereof or the use or occupancy thereof.

(f) If all or any part of the Mortgaged Property shall be damaged by fire or other casualty, the Borrowers will promptly restore the Mortgaged Property to the equivalent of its original condition, regardless of whether or not there shall be any insurance proceeds therefor and whether or not the same are made available by the Lender for such purpose. If a part of the Mortgaged Property shall be physically damaged through condemnation, the Borrowers will promptly restore, repair, or alter the remaining property in a manner satisfactory to the Lender.

1.09 Further Assurances After Acquired Property. At any time and from time to time, upon request by the Lender, the Borrowers will make, execute and deliver or cause to be made, executed and delivered to the Lender, and where appropriate, to cause to be recorded and/or filed and from time to time thereafter to be re-recorded and/or refiled at such time and in such offices and places as shall be deemed desirable by the Lender, any and all such other and further mortgages, security agreements, financing statements, continuation statements, instruments of further assurances, certificates and other documents as may, in the opinion of the Lender, be necessary or desirable in order to effectuate, complete, enlarge or perfect, or to continue and preserve (a) the obligations of the Borrower under the Note and this Mortgage, and (b) the lien and security interest of this Mortgage as a first and prior lien and security interest upon all of the Mortgaged Property, whether now or hereafter acquired by the Mortgagors.

Upon any failure by the Mortgagors so to do, the Lender may make, execute, record, file, re-record and/or refile any mortgage and all such mortgages, security agreements, financing statements, continuation statements, instruments, certificates and documents for and in the name of the Mortgagors, and the Mortgagor hereby irrevocably appoints the Lender the agent and attorney-in-fact of the Mortgagors so to do. The lien and security interest hereof will automatically attach, without

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further act, to all after acquired property attached to and/or used in the operation of any improvements now or hereafter located on the Mortgaged Property or any part thereof.

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1.10 Leases and Other Agreements Affecting the Mortgaged Property. The Borrowers will duly and punctually perform all terms, covenants, conditions and agreements binding upon it or the Mortgaged Property under any lease or any other agreement or instrument or any nature whatsoever which involves or affects the Mortgaged Property or any part thereof. The Borrowers represent and warrants that it has heretofore furnished the Lender with true and complete copies of all such leases, agreements and instruments existing on the date of this Mortgage. The Borrowers agree to furnish the Lender with executed copies of all leases hereafter entered into with respect to all or any part of the Mortgaged Property. The Borrowers will not, without the express consent of the Lender, enter into any new lease or modify, surrender, terminate, extend or renew, either orally or in writing, the Lease or any other lease now existing or hereafter created upon the Mortgaged Property or any part thereof nor will the Borrowers permit an assignment or sublease without the express written consent of the Lender. The Borrowers will not accept payment of advance rents or security deposits equal, in the aggregate, to more than one (1) month's rent without the express written consent of the Lender. The Borrowers will not permit any sale, assignment or transfer of any ownership interest in the tenant under the Lease. In order to further secure payment of the Note and the observance, performance and discharge of the Borrowers' obligations hereunder, the Borrowers hereby assigns, transfers and sets over to the Lender all of the Borrowers' right, title and interest in, to and under all of the leases now or hereafter affecting the Mortgaged Property or any part thereof and in and to all of the rents, issues, profits, revenues, awards and other benefits now or hereafter arising from the Mortgaged Property or any part thereof. Unless and until an Event of Default occurs, the Borrowers shall be entitled to collect the rents, issues, profits, revenues, awards and other benefits of the Mortgaged Property (except as otherwise provided in this Mortgage) as and when they become due and payable. The Lender shall be liable to account only for the rents, issues, profits, revenues, awards and other benefits of the Mortgaged Property actually received by the Lender pursuant to any provision of this Mortgage.

1.11 Expenses. The Borrowers will immediately upon demand pay or reimburse the Lender for all reasonable attorneys' fees, costs and expenses incurred by the Lender in any proceedings involving the estate of a decedent, and insolvent or a bankrupt, or in any action, proceeding or dispute of any kind in which the Lender is made a party or appears as an intervenor or party plaintiff or defendant, affecting or relating to the Note, this

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Mortgage, the Mortgagors, any of the beneficiaries of the Mortgagors or the Mortgaged Property, including, but not limited to, the foreclosure of this Mortgage, any condemnation action involving the Mortgaged Property, or any action to protect the security hereof, and any such amounts paid by the Lender shall be added to the indebtedness secured hereby and secured by the lien and security interest of this Mortgage, and shall bear interest at the rate provided in the Note for interest payable after default (the "Default Rate").

1.12 Estoppel Affidavits. The Borrowers, within ten (10) days after written request from the lender, shall furnish a written statement, duly acknowledged, setting forth the unpaid principal of, and interest on, the indebtedness secured hereby and whether or not any offsets or defenses are claimed against such principal and interest.

1.13 Subrogation. The Lender shall be subrogated to the claims and liens of all parties whose claims or liens are discharged or paid with the proceeds of the indebtedness secured hereby.

1.14 Use of Proceeds.

(a) The Borrower represents and agrees that the proceeds of the Note secured by this Mortgage will be used for the purposes specified in Section 4(1) (c) of Chapter 17, Paragraph 6404 of the Illinois Revised Statutes, and that the indebtedness secured hereby constitutes a business loan which comes within the purview of said Section 4(1) (c).

(b) All agreements between the Borrower, the Mortgagor and the Lender (including, without limitation, this Mortgage, the Note and any other documents securing the indebtedness secured hereby) are expressly limited so that in no event whatsoever shall the amount paid or agreed to be paid to the Lender exceed the highest lawful rate of interest permissible under the laws of the State of Illinois. If, from any circumstances whatsoever, fulfillment of any provision hereof or of the Note or any other documents securing the indebtedness secured hereby, at the time performance of such provision shall be due, shall involve payment of interest exceeding the limit of validity prescribed by law which a court of competent jurisdiction may deem applicable hereto, then ipso facto, the obligation to be fulfilled shall be reduced to the highest lawful rate of interest permissible under the laws of the State of Illinois, and if for any reason whatsoever, the Lender shall ever receive as interest an amount which would be deemed unlawful, such interest shall be applied to the payment of principal of the indebtedness secured hereby (whether or not then due and payable) and not to the payment of interest.

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1.15 Prohibition of Transfer. The Borrowers will not, without the prior written consent of the Lender, which consent will not be unreasonably withheld, sell, assign or transfer, whether by operation of law or otherwise, all or any portion of its interest in the Mortgaged Property or any stock interest in Borrowers. Any such sale, assignment or transfer made without the Lender's prior written consent shall be null and void and of no force and effect, but the attempt at making thereof shall, at the option of the Lender, constitute an Event of Default under this Mortgage.

1.16 Prohibition of Further Encumbrance. The Borrowers will not, without the prior written consent of the Lender, which consent will not be unreasonably withheld, further mortgage, grant a deed of trust, pledge or otherwise encumber, whether by operation of law or otherwise, all or any of its interest in the Mortgaged Property. Any such encumbrance made without the Lender's prior written consent shall be null and void and of no force or effect, but the attempt at making thereof shall, at the option of the Lender, constitute an Event of Default under this Mortgage.

## ARTICLE 11

2.01 Events of Default. The terms "Event of Default" or "Events of Default", wherever used in this Mortgage, shall mean any one or more of the following events:

(a) Failure by Borrowers to pay when due any payment of interest under the Note or this Mortgage or to make when due any deposits required by Paragraph 1.03 hereof; or

(b) Failure by the Borrowers to duly observe or perform any term, covenant, condition or agreement in any assignment of lease, assignment of rents or any other agreement made or given as additional security for the performance of the Note or this Mortgage; or

(c) The filing by the Borrowers of a voluntary petition in bankruptcy or the Borrowers' adjudication as a bankrupt or insolvent, or the filing by the Borrowers of any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future federal, state or other law or regulation relating to bankruptcy, insolvency or other relief for debtors, or the Borrowers' seeking or consenting to or acquiescing in the appointment of any trustee, receiver or liquidator of itself or any portion of its assets or of all or any part of the Mortgaged Property or of any or all of the rents,

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issues, profits or revenues thereof, or the making of any general assignment for the benefit of creditors, or the admission in writing of its inability to pay its debts generally as they become due; or

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(d) The entry by a court of competent jurisdiction of an order, judgment or decree approving a petition filed against the Borrowers seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future federal, state or other law or regulation relating to bankruptcy, insolvency or other similar relief for debtors, which order, judgment or decree remains unvacated and unstayed for an aggregate of sixty (60) days (whether or not consecutive) from the date of entry thereof, or the appointment of any trustee, receiver or liquidator of the Borrowers or of all or any part of the Mortgaged Property or of any or all of the rents, issues, profits or revenues thereof without its consent or acquiescence, which appointment shall remain unvacated or unstayed for an aggregate of sixty (60) days (whether or not consecutive).

2.02 Acceleration of Maturity. If an Event of default shall have occurred and be continuing for a period of ten days with regard to monetary defaults and thirty days with regard to non-monetary defaults following written notice, as prescribed in Section 3.04 of this Mortgage, then the entire indebtedness secured hereby shall, at the option of the Lender, immediately become due and payable without further notice or demand of any kind.

2.03 Lender's Right to Enter and Take Possession, Operate and Apply Revenues.

(a) If an Event of default shall have occurred and be continuing, the Borrowers, upon demand of the Lender, shall forthwith surrender to the Lender, the actual possession, and if and to the extent permitted by law, the Lender itself, or by such officers or agents as it may appoint, may enter and take possession, of all or any part of the Mortgaged Property, and may exclude the Borrowers and its agents and employees wholly therefrom, and may have joint access with the Borrowers to the Books, papers and accounts of the Borrowers.

(b) If the Borrowers shall for any reason fail to surrender or deliver the Mortgaged Property or any part thereof after such demand by the Lender, the Lender may obtain a judgment or decree conferring on the Lender the right to immediate possession or requiring the delivery of immediate possession of all or part of such Mortgaged Property to the Lender, to the entry of which judgment or decree the Borrowers specifically consents.

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(c) The Borrowers will pay to the Lender, upon demand, all expenses (including without limitation, reasonable fees and expenses of attorneys, accountants and agents) of obtaining such judgment or decree or of otherwise seeking to enforce its rights under the Note or this Mortgage; and all such expenses shall, until paid, be secured by this Mortgage and shall bear interest at the Default Rate.

(d) Upon every such entering upon or taking of possession, the Lender may hold, store, use, operate, manage and control the Mortgaged Property and conduct the business thereof, and, from time to time, (i) make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, personalty or other property; (ii) insure or keep the Mortgaged Property insured; (iii) manage and operate the Mortgaged Property and exercise all the rights and powers of the Borrowers to the same extent as the Borrowers could in its own name or otherwise with respect to the same; and (iv) enter into any and all agreements with respect to the exercise by others of any of the powers herein granted to the Lender, all as the Lender from time to time may determine to be to its best advantage. The Lender may collect and receive all the rents, issues, profits and revenues of the same, including those past due as well as those accruing thereafter, and, after deducting (aa) all expenses of taking, holding, managing and operating the Mortgaged Property including compensation for the services of all persons employed for such purposes; (bb) the cost of all such maintenance, repairs, renewals, replacements, additions, betterments, improvements, purchases and acquisitions; (cc) the cost of such insurance; (dd) such taxes, assessments and other similar charges as the Lender may determine to pay; (ee) other proper charges upon the Mortgaged Property or any part thereof; and (ff) the reasonable compensation, expenses and disbursements of the attorneys and agents of the Lender, shall apply the remainder of the monies and proceeds so received by the Lender, first to payment of accrued interest; second to the payment of deposits required in Paragraph 1.03 hereof; and third to the payment of principal.

(e) The Lender shall have no liability for any loss, damage, injury, cost or expense resulting from any action or omission by it or its representatives which was taken or omitted in good faith.

2.04 Performance by the Lender of Defaults. If default shall occur in the payment, performance or observance of any term, representation, warranty, covenant or condition of this Mortgage (whether or not the same shall constitute an Event of default), the Lender may, at its option, pay, perform or observe

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the same or take any action necessary to cause any representation or warranty to be true, and all payments made or costs or expenses incurred by the Lender in Connection therewith, shall be secured hereby and shall be, without demand, immediately repaid by the Borrowers to the Lender with interest thereon at the default Rate. The Lender shall be the sole judge of the necessity for any such actions and of the amounts to be paid. The Lender is hereby empowered to enter and to authorize others to enter upon the Mortgaged Property or any part thereof for the purpose of performing or observing any such defaulted term, covenant or condition without thereby becoming liable to the Borrowers or any person in possession holding under the Borrowers

2.05 Construction Loan. The principal amount evidenced by the note is to be used in the construction of certain improvements on the land, including but not limited to the construction of a two story brick residence and garage.

2.06 Receiver. If an Event of Default shall have occurred and be continuing, the Lender, upon application to a court of competent jurisdiction, shall be entitled as a matter of strict right without notice and without regard to the occupancy or value of any security for the indebtedness or the insolvency of any party bound for its payment to the appointment of a receiver to take possession of and to operate the Mortgaged Property and to collect and apply the rents, issues, profits and revenues thereof. The receiver shall have all of the rights and powers to the fullest extent permitted by law. The Borrowers will pay to the Lender upon demand (with interest thereon at the Default Rate) all reasonable expenses, including receiver's fees, attorneys' fees, costs and agent's compensations, incurred pursuant to the provisions of this paragraph 2.06; and all such expenses shall be secured by the Mortgage and shall bear interest at the Default Rate.

2.07 The Lender's Power of Enforcement. If an Event of Default shall have occurred and be continuing, the Lender may, either with or without entry or taking possession as herein provided or otherwise, proceed by suit or suits at law or in equity or by any other appropriate proceeding or remedy (a) to enforce the payment of the Note or the performance of any term, covenant, condition or agreement of this Mortgage or any other right, (b) to foreclose this Mortgage and to sell the Mortgaged Property as an entirety or otherwise, as the Lender may determine, and (c) to pursue any other remedy available to it, including any remedy available to it all as the Lender shall deem most effectual for such purposes. The Lender may take action

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either by such proceedings or by the exercise of its powers with respect to entry or taking possession, as the Lender may determine. The Lender may elect to pursue any one or more or all of the foregoing.

2.08 Purchase by the Lender. Upon any foreclosure sale, the Lender may bid for and purchase the Mortgaged Property and shall be entitled to apply all or any part of the indebtedness secured hereby as a credit to the purchase price.

2.09 Fees and Expenses; Application of Proceeds of Sale. In any suit to foreclose the lien hereof, there shall be allowed and included as additional indebtedness secured hereby in the decree for sale all reasonable costs and expenses which may be paid or incurred by or on behalf of the Lender or holders of the Note for attorneys' fees, appraiser's fees, receiver's costs and expenses, insurance, taxes, outlays for documentary and expert evidence, costs for preservation of the Mortgaged Property, stenographer's charges, publication cost and costs of procuring all abstracts of title, title searches and examinations, guarantee policies, Certificates of Title issued by the Registrar of Titles (Torrens Certificates), and similar data and assurances with respect to title as the Lender or holders of the Note may deem to be reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or value of the Mortgaged Property or for any other reasonable purpose. The amount of any such costs and expenses which may be paid or incurred after the decree for sale is entered may be estimated and the amount of such estimate may be allowed and included as additional indebtedness secured hereby in the decree for sale. In the event of a foreclosure sale of the Mortgaged Property, the proceeds of said sale shall be applied, first, to the expenses of such sale and of all proceedings in connection therewith, including attorneys' fees, then to insurance premiums, liens, assessments, taxes and charges, including utility charges, then to payment of the outstanding principal balance of the indebtedness secured hereby, then to the accrued interest on all of the foregoing, and finally the remainder, if any, shall be paid to the Borrowers.

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2.10 Waiver of Appraisement, Valuation, Stay, Extension and Redemption Laws. The Borrowers agree to the full extent permitted by law, that if an Event of Default occurs hereunder, neither the Borrowers nor anyone claiming through or under it shall or will set up, claim or seek to take advantage of any appraisement, valuation, stay, extension, or homestead laws now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, nor the absolute sale of the property hereby conveyed, or the final and absolute



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putting into possession thereof, immediately after such sale, of the purchasers thereof, and the Borrowers, for itself and all who may at any time claim through or under it, hereby waives and releases to the full extent that it may lawfully so do, the benefit of all such laws (including, without limitation, all rights under and by virtue of the homestead exemptions laws of the State of Illinois) and any and all rights to have the assets comprised in the security intended to be created hereby marshalled upon any foreclosure of the lien hereof.

2.11 Discontinuance of Proceedings and Restoration of the Parties. In case the Lender shall have proceeded to enforce any right, power or remedy under this Mortgage by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Lender, then and in every such case the Borrowers and the Lender shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of the Lender shall continue as if no such proceeding had been taken.

2.12 Remedies Cumulative. No right, power or remedy conferred upon or reserved to the Lender by this Mortgage is intended to be exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or now or hereafter existing at law or in equity or by statute.

2.13 Waiver. No delay or omission of the Lender or of any holder of the Note to exercise any right, power or remedy accruing upon any default shall exhaust or impair any such right, power or remedy or shall be construed to be a waiver of any such default, or acquiescence therein; and every right, power or remedy given by this Mortgage to the Lender may be exercised from time to time and as often as may be deemed expedient by the Lender. No consent or waiver, expressed or implied, by the Lender to or of any breach or default by the Borrowers in the performance of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance of the same or any other obligations of the Borrowers hereunder. Failure on the part of the Lender to complain of any acts or failure to act or to declare an Event of Default, irrespective of how long such failure continues, shall not constitute a waiver by the Lender of its rights hereunder or impair any rights, powers or remedies on account of any breach or default by the Borrowers.

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If the Lender (a) grants forbearance or an extension of time for the payment of any sums secured hereby; (b) takes other or additional security for the payment of any sums secured hereby; (c) waives or does not exercise any right granted herein or in the Note or in any other document or instrument securing the Note; (d) releases with or without consideration any of the Mortgaged Property from the lien of this Mortgage or any other security for the payment of the indebtedness secured hereby; (e) changes any of the terms, covenants, conditions or agreements of the Note or this Mortgage or in any other document or instrument securing the note; (f) consents to the filing of any map, plat or replat or condominium declaration affecting the Mortgaged Property; (g) consents to the granting of any easement or other right affecting the Mortgaged Property; or (h) makes or consents to any agreement subordinating the lien hereof; any such act or omission shall not release, discharge, modify, change or affect (except to the extent of the changes referred to in clause (e) above) the original liability under the Note, this Mortgage or any other obligation of the Borrowers or any subsequent purchaser of the Mortgaged Property or any part thereof, or any maker, co-signer, endorser, surety or guarantor; nor shall any such act or omission preclude the Lender from exercising any right, power or privilege herein granted or intended to be granted in the event of any default then made or of any subsequent default, nor, except as otherwise expressly provided in an instrument or instruments executed by the Lender, shall the lien of this Mortgage or the priority thereof be altered thereby, whether or not there are junior lienors and whether or not they consent to any of the foregoing. In the event of the sale or transfer, by operation of law or otherwise, of all or any part of the Mortgaged Property, the Lender, without notice, is hereby authorized and empowered to deal with any such vendee or transferee with reference to such portion of the Mortgaged Property or the indebtedness secured hereby, or with reference to any of the terms, covenants, conditions or agreements hereof, as fully and to the same extent as it might deal with the original parties hereto and without in any way releasing or discharging any liabilities, obligations or undertakings. The foregoing shall not limit the prohibition against such sale or transfer set forth in Paragraph 1.15 hereof.

Without limitation of the foregoing, the right is hereby reserved by the Lender to make partial release or releases of the Mortgaged Property, or of any other security held by the Lender with respect to all or any part of the indebtedness secured hereby, without notice to, or the consent, approval or agreements of, other parties in interest, including junior lienors, which partial release or releases shall not impair in any manner the validity or priority of this Mortgage on the portion of said Property not so released.

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## ARTICLE 111

18710-38-5L

3.01 Suits to Protect the Mortgaged Property. The Lender shall have the power (a) to institute and maintain such suits and proceedings as it may deem expedient to prevent any impairment of the Mortgaged Property by any acts which may be unlawful or in violation of this Mortgage; (b) to preserve or protect its interest in the Mortgaged Property and in the rents, issues, profits and revenues arising therefrom; and (c) to restrain the enforcement of or compliance with any legislation or other governmental enactment, regulation, rule, order or other requirement that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, regulation, rule, order or other requirement would impair the security hereunder or be prejudicial to the interest of the Lender, and all costs and expenses incurred by the Lender in connection therewith (including, without limitation, attorneys' fees) shall be paid by the Borrowers to the Lender on demand (with interest at the Default Rate) and shall be additional indebtedness secured hereby.

3.02 The Lender May File Proofs of Claim. In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting the Borrowers, its creditors or its property, the Lender, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have the claims of the Lender allowed in such proceedings for the entire amount due and payable by the Borrower under this Mortgage at the date of the institution of such proceedings and for any additional amount which may become due and payable by the Borrowers hereunder after such date.

3.03 Successors and Assigns. This Mortgage shall inure to the benefit of and be binding upon the Borrowers and the Lender and their respective successors and assigns. Whenever a reference is made in this Mortgage to the Borrowers or the Lender, such reference shall be deemed to include a reference to the successors and assigns of the Borrowers or the Lender.

3.04 Notices. All notices, demands and requests given or required to be given by either party hereto to the other party shall be in writing. All such notices, demands and requests by the Lender to the Borrowers shall be deemed to have been properly given if served in person or if sent by United States registered or certified mail, return receipt requested, postage prepaid, addressed to the Borrowers at:

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Bernard J. Miller  
Laura Meagher-Miller  
710 Waukegan Road  
Glenview, Illinois 60025

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of to such other address as the Borrowers may from time to time designate by written notice to the Lender given as herein required by the Borrowers. All notices, demands and requests to the Lender shall be deemed to have been properly given if served in person or if sent by United States registered or certified mail, return receipt requested, postage prepaid, addressed to the Lender at:

NBD Bank Evanston, N.A.  
1603 Orrington Avenue  
Evanston, Illinois 60204  
Attention: Mary Pat Korrigan  
Vice President

or to such other address as the Lender may from time to time designate by written notice to the Borrowers given as herein required. Notices, demands and requests given by mail in the manner aforesaid shall be deemed sufficiently served or given for all purposes hereunder two (2) days after the time such notice, demand or request shall be deposited in the mails.

3.05 Terminology. All personal pronouns used in this Mortgage, whether used in the masculine, feminine or neuter gender, shall include all other genders; the singular shall include the plural, and vice versa. Titles and sections are for convenience only and neither limit nor amplify the provisions of this Mortgage itself, and all references herein to Articles, Sections or paragraphs shall refer to the corresponding Articles, Sections or Paragraphs of this Mortgage unless specific reference is made to such Articles, Sections or Paragraphs of another document or instrument.

3.06 Severability. If any provision of this Mortgage or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Mortgage and the application of such provision to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

3.07 Applicable Law. This Mortgage shall be interpreted, construed and enforced according to the laws of the State of Illinois.

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3.08 Security Agreement. This Mortgage shall be construed as a "Security Agreement" within the meaning of and shall create a security interest under the Uniform Commercial Code as adopted by the State of Illinois with respect to any part of the Mortgaged Property which constitutes fixtures or personal property. The Lender shall have the rights with respect to such fixtures and personal property afforded to it by said Uniform Commercial Code in addition to, but not in limitation of, the other rights afforded the Lender by this Mortgage or any other agreement.

3.09 Modification. No change, amendment, modification, cancellation or discharge hereof, or any part hereof, shall be valid unless in writing and signed by the parties hereto or their respective successors and assigns.

3.10 No Merger. It being the desire and the intention of the parties hereto that this Mortgage and the lien hereof do not merge in fee simple title to the Mortgaged Property, it is hereby understood and agreed that should the Lender acquire any additional or other interests in or to said property or the ownership thereof, then unless a contrary intent is manifested by the Lender as evidenced by an appropriate document duly recorded this Mortgage and the lien hereof shall not merge in the fee simple title, toward the end that this Mortgage may be foreclosed as if owned by a stranger to the fee simple title.

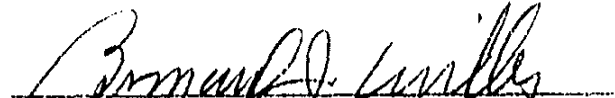
3.11 Delivery of Summons, Etc. If any action or proceeding shall be instituted to evict the Borrowers or recover possession of the Mortgaged Property or any part thereof or otherwise affecting the Mortgaged Property or this Mortgage, the Borrower will immediately, upon service thereof or by the Borrower, deliver to the Lender a true copy of each petition, summons, complaint, notice of motion, order to show cause and all other process, pleadings and papers, however designated, served in any such action or proceeding.

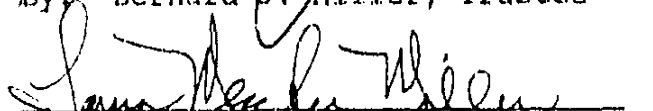
3.12 No Partnership. Borrowers acknowledge and agree that in no event shall Lender be deemed to be a partner or joint venturer with Borrowers. Without limitation of the foregoing, Lender shall not be deemed to be such a partner or joint venturer on account of its becoming a mortgagee in possession or exercising any rights pursuant to this Mortgage or pursuant to any other instrument or document securing any portion of the indebtedness secured hereby or on account of receiving contingent interest, if any, or any release fee for partial releases of this Mortgage, or otherwise.

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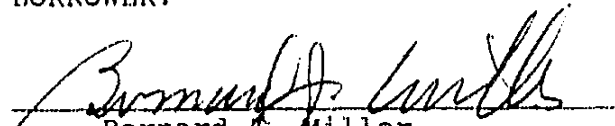
IN WITNESS WHEREOF, the Mortgagors have caused this Mortgage and Security Agreement to be signed and delivered on the day and year first above written.

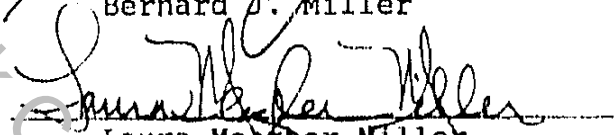
THE MEACHER-MILLER TRUST dated  
October 17, 1991

  
By: Bernard J. Miller, Trustee

  
By: Laura Meacher-Miller, Trustee

BORROWER:

  
Bernard J. Miller

  
Laura Meacher-Miller

Property of Cook County Clerk's Office

1B#1034-52

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## EXHIBIT "A"

### Legal Description

73-43-4281

Lot 1 in Margaret Resubdivision of part of the North 1/2 of the Northeast 1/4 of the Southwest 1/4 of the Northeast 1/4 of Section 25, Township 42 North, Range 12 East of the Third Principal Meridian, in Cook County, Illinois.

PIN: 04-25-202-113

ADDRESS: 801 Queens Lane, Glenview, Illinois 60025



THIS INSTRUMENT PREPARED BY: *maie vo*  
NBD BANK EVANSTON, N.A.  
1603 ORRINGTON AVENUE  
EVANSTON, ILLINOIS 60204  
CHARETTE B. GO

Property of Cook County Clerk's Office

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