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THE NAPERVILLE BANK

## MORTGAGE

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THIS MORTGAGE is dated as of July 12, 1993, and is between LaSalle National Trust, N.A., as Trustee and not personally under a Trust Agreement dated July 17, 1978 and known as Trust No. 54025 ("Trust") having an address at 135 South LaSalle Street, Room 311, Chicago, Illinois 60603 ("Mortgagor") (defined below) and The Naperville Bank, an Illinois banking corporation, with an office located at 1112 South Washington, Naperville, Illinois 60566-0355 ("Mortgagee") (defined below).

### WITNESSETH:

Whereas, the Mortgagor, the Beneficiary (defined below) and Jacob H. Berg jointly and severally have executed a promissory note dated as of the date of this Mortgage, payable to the order of the Mortgagee in the principal amount of One Million and 00/100 Dollars (\$1,000,000.00) Dollars ("Note") with interest in arrears on the principal balance remaining from time to time unpaid.

**INTEREST** shall accrue on the unpaid principal balance of the Note from and after the date thereof, as computed based on a 360 day year for the actual number of days the principal balance is outstanding, at the initial rate of six and sixteen hundredths of one percent (6.16%) per annum ("Interest Rate"). The Interest Rate under the Note shall be adjusted on the first day of March, 1994 and on the same day of each consecutive six calendar month period thereafter ("Adjustment Date") to a rate equal to three percent (3.0%) in excess of the Index Rate (defined below) then in effect on the Adjustment Date ("Adjusted Interest Rate"); **PROVIDED THAT** at no time shall the Adjusted Interest Rate exceed eleven and three quarters of one percent (11.75%) per annum and in no event shall the current interest rate under the Note be greater than that allowed by applicable law.

The term "Index Rate" shall mean the weekly average of yield on United States Treasury Notes adjusted to a constant maturity of six (6) months effective from time to time when published and made available by the Federal Reserve Board in its Federal Reserve Statistical Release, H.15 (519).

The Mortgagee makes no representation that the Index Rate is the best or lowest interest rate offered by the Mortgagor or by other lenders to borrowers. In the event the Index Rate is no longer announced or published, the Mortgagee in its sole discretion will select a rate comparable to the Index Rate and such Index rate selected by the Mortgagee shall be deemed the applicable Index Rate in the Note.

After the date of any Default (defined below) or maturity, whether by acceleration or otherwise, interest on the principal balance remaining from time to time unpaid shall be at the per annum rate of four percent (4%) in excess of the then current interest rate on the Note ("Default Rate"). The Mortgagee may in its sole discretion adjust the installment payments (defined below) to accommodate payment of the Default Rate after a Default is declared in accordance herewith.

**PRINCIPAL AND INTEREST PAYMENTS** ("Installment Payments") on the Note shall be due and payable in equal monthly installments in the amount of Seven Thousand Three Hundred Eleven and 65/100 Dollars (\$7,311.65) beginning on September 1, 1993 and continuing on the first day of each calendar month thereafter until September 1, 2001 ("Maturity Date"), at which time the entire unpaid balance of principal, accrued and unpaid interest, fees and charges due under the Note shall be due and payable in full; **PROVIDED, HOWEVER** that commencing on the Adjustment Date the monthly installment payments shall be adjusted, based on the Adjusted Interest Rate to an amount sufficient to fully amortize the then unpaid principal

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balance together with, as the Mortgagee may determine, in its sole discretion, any unpaid interest, fees or charges due hereunder, by September 1, 2011. Any Installment Payments made under the Note may be applied by the Mortgagee in its sole discretion to the Liabilities (defined below) in the order of application as the Mortgagee in its sole discretion shall elect. The Mortgagee shall pay to the Mortgagor a late charge in the amount of five percent (5%) of any Installment Payment of interest or principal, or both, or any other payment which shall become ten (10) or more calendar days past due the applicable payment date. If any payment becomes due and payable on a Saturday, Sunday or legal holiday under the laws of the State of Illinois, the due date shall be extended to the next business day.

To secure performance and payment of the Indebtedness evidenced by the Note and the Liabilities, including any and all modifications, renewals and extensions of the Note, the Mortgagor does by these presents CONVEY, WARRANT and MORTGAGE unto the Mortgagee all of the Mortgagor's estate, right, title and interest in the Premises (defined below) and the real estate situated, lying and being in the County of Cook, and State of Illinois, legally described on Exhibit A which is attached hereto and made a part hereof ("Real Estate").

Further, the Mortgagor and the Beneficiary hereby pledge and assign to the Mortgagee, all leases, written or verbal, rents, issues and profits of the Premises, including without limitation, all rents, issues, profits, revenues, royalties, bonuses, rights and benefits due, payable or accruing, and all deposits of money an advance rent or for security, under any and all present and future leases of the Premises, together with the right, but not the obligation, to collect, receive, demand, sue for and recover the same when due or payable. The Mortgagee by acceptance of this Mortgage agrees, as a personal covenant applicable to the Mortgagor and the Beneficiary only, and not as a limitation or condition hereof and not available to anyone other than the Mortgagor and the Beneficiary, that until a default shall occur or an event shall occur which under the terms hereof shall give to the Mortgagee the right to foreclose this Mortgage, the Mortgagor and/or the Beneficiary may collect, receive and enjoy such avails.

Further, the Mortgagor and the Beneficiary hereby expressly waive and release all rights and benefits under and by virtue of the Homestead Exemption Laws of the State of Illinois.

## 1. DEFINITIONS:

As used herein:

- 1.01 "Additions or Alterations" means Improvements, replacements, alterations, additions, improvements or expansions in, on or to the Premises and any improvements on the Premises.
- 1.02 "Closing Date" means July 12, 1991.
- 1.03 "Default" means any one or more of the following events, conditions or acts which in the event of a monetary event, condition or act remains uncured for ten (10) days following the occurrence of such event, condition or act or which in the event of a nonmonetary event, condition or act, remains uncured for thirty (30) days after the giving of notice by the Mortgagee to the Mortgagor of such event, condition or act:
  - (a) any one or more of the events, conditions or acts defined as a "Default" in the Note;
  - (b) the failure of the Mortgagor, the Beneficiary or any Guarantor to pay the Note or Liabilities in accordance with their terms;
  - (c) the failure of the Mortgagor, the Beneficiary or any Guarantor to comply with or to perform in accordance with any representation, warranty, term, provision, condition, covenant or agreement contained in this Mortgage, the Note, or in any of the Financing Loan Documents; or
  - (d) the commencement of foreclosure proceedings or

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the, judicially approved with respect to any lien or other mortgage encumbering the Premises regardless of whether or not that lien or mortgage is a Permitted Lien.

- 1.04 "Environmental Laws" means any and all laws, statutes, ordinances, rules, regulations, orders, or determinations of any federal or state governmental authority or court, pertaining to health or the environment, in effect at any time in any and all jurisdictions in which the Mortgagor is or at any time may be doing business, or where the Premises and any other real property of the Mortgagor are located, including without limitation, the Clean Air Act, as amended, 42 U.S.C. Section 7401 et seq., the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601 et seq., (CERCLA), the Federal Water Pollution Control Act Amendments, 33 U.S.C. Section 1251 et seq., the Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. Section 651 et seq., the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. Section 6901 et seq., (RCRA), the Safe Drinking Water Act, as amended, 42 U.S.C. Section 300(f) et seq., the Toxic Substances Control Act, as amended, 5 U.S.C. Section 2601 et seq., the Illinois Environmental Protection Act, as amended, Ill. Rev. Stat., Ch. 111, Par. 1021 et seq. (1981), and the Illinois Responsible Property Transfer Act, as amended, Ill. Rev. Stat., Ch. 30, Par. 900, et seq. (1981).
- 1.05 "Financing Loan Documents" means Financing Loan Documents as defined in the Note.
- 1.06 "good faith" means honesty in fact in the conduct or the transaction concerned as determined on a subjective basis.
- 1.07 "Guarantor" means any endorser, guarantor, accommodation party, pledgor of security for or surety of any of the Liabilities.
- 1.08 "Liabilities" means any and all liabilities, obligations and indebtedness of the Mortgagor and the Beneficiary under the Note and this Mortgage owing to the Mortgagee for performance and payment of any and all amounts due under the Note and this Mortgage and under any of the other Financing Loan Documents, all without relief from valuation and appraisement laws, and for any other liabilities, indebtedness or obligations of every kind and nature of the Mortgagor, the Beneficiary or any Guarantor to the Mortgagee, whether heretofore, now or hereafter owing or arising, due or payable, howsoever created, arising or evidenced, whether direct or indirect, absolute or contingent, primary or secondary, joint or several, whether existing or arising, through discount, overdraft, purchase, direct loan, by operation of law or otherwise, together with reasonable attorneys' and paralegals' fees and costs relating to the Mortgagee's rights, remedies and security interests hereunder, including advising the Mortgagee or drafting any documents for the Mortgagee at any time in connection with the Liabilities. Liabilities includes all of the liabilities, obligations and indebtedness of any partnership owing to the Mortgagee, created or arising by such partnership while the Mortgagor, the Beneficiary or any Guarantor may have been or may be a member of such partnership. Notwithstanding the foregoing, in no event shall the Lien of this Mortgage secure outstanding liabilities in excess of two hundred percent (200%) of the original stated principal amount of the Note and this Mortgage.
- 1.09 "Manager" means Jacob H. Berg or any other person, corporation or entity operating or managing the Premises from time to time.

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- 1.10 "Mortgagee" means The First National Bank and all the successors and assigns of the Mortgagee.
- 1.11 "Mortgagor" means the Trust and all persons or entities liable for the payment of the indebtedness secured hereby or any part thereof, whether or not such persons or parties shall have executed the Note or this Mortgage and shall also include all persons or entities which have executed this Mortgage for the purpose of joining in the representations, warranties, covenants and indemnifications hereunder. Each Mortgagor shall be jointly and severally obligated hereunder.
- 1.12 "Net Proceeds" means, when used with respect to any insurance award, the gross proceeds from the insurance award with respect to which that term is used remaining after payment of all expenses, including reasonable attorneys' and paralegals' fees and costs, and any expenses of the Mortgagee incurred in the collection of such gross proceeds.
- 1.13 "Permitted Liens" means as of any particular time, this Mortgage and Liens for 1992 real estate taxes not yet due and subsequent years not yet due.
- 1.14 "Premises" means the 67,865 square foot industrial building located on the Real Estate together with all improvements, buildings, parking areas, tenements, hereditaments, appurtenances, gas, oil, minerals, easements located in, on, over or under the Real Estate, and all types of furniture, fixtures, apparatus, machinery and equipment owned by the Mortgagee, including without limitation, all of the foregoing used to supply heat, gas, air conditioning, water, light, power, refrigeration or ventilation (whether single units or centrally controlled) and all screens, window shades, storm doors and windows, floor coverings, awnings, stoves and water heaters, whether now on or in the Premises or hereafter erected, installed or placed on or in the Premises, and whether or not physically attached to the Premises. The foregoing items are and shall be deemed a part of the Premises and a portion of the security for the liabilities.
- 1.15 "Title Insurer" means the title insurance company selected by the Mortgagee in its sole discretion.

## 2. REPRESENTATIONS AND WARRANTIES.

- 2.01 The Mortgagee represents and the Beneficiary represents and warrants that the Mortgagee has good and marketable title to an indefeasible fee estate in the Premises, subject to no lien, charge or other encumbrance, except the Permitted Liens, and that this Mortgage is and will remain a valid and enforceable first lien on the Premises, except as the enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other laws, judicial decisions or principles of equity relating to or affecting the enforcement of creditors' rights or contractual obligations generally. At the Mortgagee's own cost and without expense to the Mortgagee, the Mortgagee will preserve such title, and will defend the validity and priority of this Mortgage against the claims of all other persons.
- 2.02 The Mortgagee represents and the Beneficiary represents and warrants the following:
- (a) The Premises are subject to the disclosure requirements of the Illinois Responsible Property Transfer Act of 1988, as amended; and the Mortgagee has complied with all requirements thereunder;
  - (b) the Premises and any other real property of the Mortgagee and the operations conducted thereon do

in violation of applicable federal, state or local law, statute, ordinance, rule, regulation, order or determination of any governmental authority or any restrictive covenant or deed restriction (recorded or otherwise), including without limitation all applicable zoning ordinances, building codes, flood disaster laws and Environmental Laws; and the Mortgagee and the Beneficiary have provided the Mortgagee with a Certificate of Inspection prepared by an appropriate municipal authority or with other evidence satisfactory to the Mortgagee that the Premises comply with all zoning ordinances, building codes and any requirements with respect to licenses or permits necessary for the lawful use and operation of the Premises, and with all instruments of record affecting the Premises and the Real Estate;

- (c) without limitation of subparagraph 2.02(b) above, the Premises and any other real property of the Mortgagee and the operations conducted thereon by the Mortgagee, the Beneficiary or any current or prior owner or operator of the Premises and any other such real property or operation, are not in violation of or subject to any existing, pending or threatened action, suit, investigation, inquiry or proceeding by any federal, state or local governmental authority or to any remedial obligations under any Environmental Law;
- (d) all notices, permits, licenses or similar authorizations, if any, required to be obtained or filed in connection with the operation or use of the Premises and any other real property of the Mortgagee, including without limitation past or present treatment, storage, disposal or release of a hazardous substance or solid waste into the environment, have been duly obtained or filed, and the Mortgagee is in compliance with all such notices, permits, licenses or similar authorizations;
- (e) any hazardous substance (defined below) or solid waste generated at the Premises and at any other real property of the Mortgagee has in the past been and shall continue to be transported, treated and disposed of only by carriers maintaining valid permits under RCRA and any other Environmental Laws and only at treatment, storage and disposal facilities maintaining valid permits under RCRA and any other Environmental Laws, which carriers and facilities have been and are, to the best of the Mortgagee's and the Beneficiary's knowledge, operating in compliance with such permits;
- (f) the Mortgagee and the Beneficiary have taken all steps necessary to determine and have determined that no hazardous substances or solid wastes have been disposed of or otherwise released and there has been no threatened release of hazardous substances in, on or under the Premises or in, on or under any other real property of the Mortgagee except in compliance with Environmental Laws;
- (g) the Mortgagee and the Beneficiary have taken all steps necessary to determine and have determined that no hazardous substances, hazardous facilities, pollutants or contaminants are located in, on or under the Premises or in, on or under any other real property of the Mortgagee;
- (h) the Mortgagee and the Beneficiary have no material contingent liability in connection with any release or threatened release of any hazardous substance or solid waste into the environment; and

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- (i) the use which the Mortgagee or the Beneficiary makes or intends to make of the Premises and any other real property of the Mortgagee will not result in the unlawful or unauthorized disposal or other release of any hazardous substance or solid waste in, on or under the Premises or in, on or under any other real property of the Mortgagee.

The terms "hazardous substance", "release" and "threatened release" have the meanings specified in CERCLA, and the terms "solid waste" and "disposal" (or "disposed") have the meanings specified in RCRA; provided however, in the event either CERCLA or RCRA is amended so as to broaden the meaning of any term defined thereby, such broader meanings shall apply subsequent to the effective date of such amendment, and provided further that, to the extent the laws of any state in which the Premises and any other real property of the Mortgagee are located establish a meaning for "hazardous substance", "release", "solid waste" or "disposal" which is broader than that specified in either CERCLA or RCRA, such broader meaning shall apply with regard to the Premises and any other real property of the Mortgagee located in such State. The terms "hazardous facilities", "pollutants" or "contaminants" shall have the meanings specified in any applicable local, state or federal statute, ordinance, code or regulation.

2.04 The Mortgagee represents and the Beneficiary represents and warrants the following:

- (a) The Mortgagee is the Trustee of an Illinois Land Trust and the Beneficiary is the sole owner(s) of one hundred percent (100%) of the Beneficial Interest of the Trust and has sole power of direction over the Trust. The Mortgagee is duly organized and existing in good standing under the laws of the State of Illinois and the Mortgagee and the Beneficiary have full power and authority to enter into the transactions contemplated by the Note, this Mortgage and the other Financing Loan Documents, to execute and deliver the Note, this Mortgage and the other Financing Loan Documents and to perform as required hereunder and thereunder;
- (b) Except as may have been disclosed by the Mortgagee or the Beneficiary in writing to the Mortgagee prior to the Closing Date, the Mortgagee and the Beneficiary have not made any agreement or taken any action which may cause any (individual, corporation or other entity ("Broker")) to become entitled to a commission or a finder's fee as a result of the Mortgagee's making the loan as evidenced by the Note ("Loan");
- (c) All delinquent real estate taxes, levied special assessments and all special assessments levied for improvements on the Premises, which prior to the Closing Date have been authorized by any governmental unit or agency or commenced or for which a construction contract has been entered into prior to such date, have been paid or in case the amount of any such assessment is not known, an amount as required by the Title Insurer has been deposited with the Title Insurer insuring the lien of this Mortgage, in escrow in a savings account, pursuant to an escrow agreement in form and substance satisfactory to the Mortgagee;
- (d) No UCC financing statements have been filed against the Mortgagee, the Beneficiary or the Real Estate except as will be terminated pursuant to the disbursement of the loan or as expressly permitted in writing by the Mortgagee;

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(c) The Mortgage and the Beneficiary do not own any margin security, and the Loan advanced under the Note will not be used for the purpose of purchasing or carrying any margin securities or for the purpose of reducing or retiring any indebtedness which was originally incurred to purchase any margin securities or for any other purpose not permitted by Regulation D of the Board of Governors of the Federal Reserve System; and

(1) There currently exists no management or other similar contract for the administration of the Premises ("Management Contract").

1. COVENANTS AND AGREEMENTS.

1.01 The Mortgagor and the Beneficiary shall:

- (a) promptly repair, restore or rebuild any buildings or improvements now or hereafter on the Premises which may become damaged or be destroyed;
- (b) keep the Premises in good condition and repair, without waste, and, except for the Permitted Liens, free from any encumbrance, charge, security interests, liens, mechanics' liens or claims for lien;
- (c) pay when due any indebtedness which may be secured by a lien or charge on the Premises, and upon request exhibit satisfactory evidence of the discharge of such lien or charge to the Mortgagee;
- (d) complete within a reasonable time any building or buildings now or at any time in process of construction upon the Premises;
- (e) comply with all requirements of all laws or municipal ordinances with respect to the Premises and the use of the Premises;
- (f) refrain from impairing or diminishing the value of the Premises; and
- (g) not sell, transfer or otherwise dispose of or encumber, pledge, assign, grant a security interest in or mortgage the Premises or the improvements therein or thereon without the prior written consent of the Mortgagee while any of the liabilities remain owing to the Mortgagee.

1.02 The Mortgagor and the Beneficiary may, at the Mortgagor's and the Beneficiary's own expense and upon prior written consent of the Mortgagee, make from time to time any Additions or Alterations to the Premises the Mortgagor and/or the Beneficiary may deem desirable for the Mortgagor's and/or the Beneficiary's business purposes that do not in any way materially increase the risk of fire or other hazard or otherwise adversely affect the structural integrity of the Premises or substantially reduce the value of the Premises; **PROVIDED THAT** all such Additions or Alterations to the Premises shall be located wholly within the boundary lines of the Real Estate and shall be in compliance with all applicable zoning and other building ordinances. All such Additions or Alterations so made by the Mortgagor or the Beneficiary shall become a part of the Premises and shall be subject to the lien of this Mortgage. The Mortgagor and the Beneficiary shall not permit any mechanics' liens, security interests, charges or other encumbrances to remain against the Premises for labor or materials furnished in connection with any Additions or Alterations, unless payment for such labor or materials

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is not to pay the same, PROVIDED, HOWEVER, the Mortgagor and the Beneficiary may in good faith contest any mechanical Lien or other Lien filed or established against the Premises, and in such event may permit the item so contested to remain undischarged and unpaid during the period of such contest and any appeal therefrom, provided that nonpayment of any such item will not materially endanger the lien of this Mortgage as to any material part of the Premises or the revenues therefrom, and that neither the Premises nor any material part thereof will be subject to loss or forfeiture as a result of the nonpayment of any such item during such period. Prior to the commencement of any such contest, the Mortgagor or the Beneficiary shall deposit with the Mortgagee an amount of cash or letter of credit acceptable to the Mortgagee and equal to at least two hundred per cent (200%) of the contested amount or with the Title Insurer whatever amount of cash or other property the Title Insurer requires to insure over such liens. While no Default exists, the Mortgagee will, at the expense of the Mortgagor and the Beneficiary, cooperate with the Mortgagor and the Beneficiary in any such contest. In the event that the Mortgagor or the Beneficiary shall fail to pay any of the foregoing items required by this Paragraph 1.02 to be paid by the Mortgagor and/or the Beneficiary, the Mortgagee may, but shall be under no obligation to, pay the same and any amount so advanced therefor by the Mortgagee shall become an additional obligation of the Mortgagor and the Beneficiary, together with interest thereon at a per annum rate equivalent to the Default Rate set forth in the Note. All expenditures incurred pursuant to the powers herein contained shall become a part of the liabilities secured hereby. The Mortgagee shall not be liable to account to the Mortgagor or the Beneficiary for any action taken pursuant hereto.

1.03 The Mortgagor shall furnish or shall cause to be furnished to the Mortgagee an AEA Mortgagee's Title Policy ("Title Policy") issued by the Title Insurer showing the Mortgagor as owner of the Real Estate in fee simple. The Title Policy shall insure this Mortgage (i) in the full amount of the loan, with extended coverage, including without limitation a 1.1 zoning endorsement, survey, environmental, location, survey, access and comprehensive endorsements and any other endorsements as may be required by the Mortgagee; and (ii) as a valid first lien on the Real Estate subject only to such exceptions, encumbrances, easements, defects and objections as are approved in writing by the Mortgagee. At the Mortgagee's discretion, the disbursement of the proceeds of the loan may be closed in escrow and disbursement of the proceeds withheld by the Mortgagee pending the Title Insurer's issuance of the Title Policy in form and substance acceptable to the Mortgagee.

1.04 (a) The Mortgagor and the Beneficiary shall pay when due and before any penalty attaches, all general taxes, special taxes, special assessments, water taxes or charges, drainage taxes or charges, sewer service taxes or charges, and other taxes, assessments or charges against the Premises. The Mortgagor and the Beneficiary shall, upon written request, furnish to the Mortgagee duplicate paid receipts for such taxes, assessments and charges. To prevent a Default hereunder, the Mortgagor or the Beneficiary may pay in full, under protest, in the manner provided by statute, any tax, assessment or charge with the Mortgagor or Beneficiary may desire to contest prior to such tax, assessment or charge becoming delinquent.

(b) The Mortgagor or the Beneficiary may, at its expense and in its own name and behalf, in good faith, contest any such tax, assessments and other charges and, in the event of any such

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content, may remain in the same circumstances or other charges are contented to remain unpaid during the period of such content and any appeal therefrom, provided during such period enforcement of any such contented item shall be effectively stayed and further provided that nonpayment of any such item will not materially endanger the lien or security interest afforded by this Mortgage as to any material part of the Premises or the revenue or receipts therefrom and that neither the Premises nor any material part thereof will be subject to loss or forfeiture as a result of the nonpayment of any such item during such period. Prior to the commencement of any such content, the Mortgagor or the Beneficiary shall deposit with the Mortgagee an amount of cash or letter of credit acceptable to the Mortgagee and equal to at least two hundred per cent (200%) of the contested amount or such amount required by the Title Insurer in order for the Title Insurer to insure over such taxes, assessments or other charges. In the event that the Mortgagor or the Beneficiary shall fail to pay any of the foregoing items required by this Paragraph 3.04 to be paid by the Mortgagor and/or the Beneficiary, the Mortgagee may, but shall be under no obligation to, pay the same and any amounts so advanced therefor by the Mortgagee shall become an additional obligation of the Mortgagor and the Beneficiary, together with interest thereon at a per annum rate equivalent to the Default Rate set forth in the Note. All expenditures incurred pursuant to the powers herein contained shall become a part of the liabilities secured hereby. The Mortgagee shall not be liable to account to the Mortgagor or the Beneficiary for any action taken pursuant hereto.

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3.05 (a) The Mortgagor and the Beneficiary shall at all times keep the Premises continuously insured against such risks as are customarily insured against by businesses of like size and type, paying as the same become due all premiums in respect thereto, including, without limitation, all of the following:

(i) The Mortgagor and the Beneficiary shall keep the Premises and all improvements thereon now existing or hereinafter erected insured against loss or damage resulting from fire, windstorm, lightning, vandalism, malicious damage and other hazards as may be designated by the Mortgagee under a form of fire and extended coverage insurance policy for one hundred percent (100%) of the replacement cost without a co-insurance clause and without deduction for depreciation of the Premises and improvements on the Real Estate, which coverage shall at all times be in an amount at least equal to the outstanding principal balance of the Note. All such policies shall name the Mortgagee as either insured Mortgagee and loss payee, shall contain a standard mortgage clause, as provided in subparagraphs 3.05(c) and (d) below, in form and substance acceptable to the Mortgagee and shall be assigned to the Mortgagee as additional security for the Liability.

(ii) The Mortgagor and the Beneficiary shall provide Liability Insurance in the amount of \$1,000,000.00 per occurrence for Bodily Injury and \$1,000,000.00 per occurrence for Property Damage, and such policy shall name the Mortgagee as an additional insured.

(iii) The Mortgagor and the Beneficiary shall carry

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and to include comprehensive worker's compensation insurance in such amounts as required by law.

- (iv) If steam boilers or similar equipment for the generation of steam are located in, on or about the Premises, the Mortgagor and the Beneficiary shall carry and maintain insurance against loss or damage by explosion, rupture or bursting of such equipment and appurtenances thereto, without a co-insurance clause, in an amount as the Mortgagor may require, and such policies shall contain a standard mortgage clause in form and substance acceptable to the Mortgagor.
- (v) The Mortgagor and the Beneficiary shall maintain business interruption/loss of rents insurance in the minimum amount of an amount equal to the total of twelve (12) monthly loan and tax reserve payments pursuant to the Note, and such policy shall contain a standard mortgage clause in form and substance acceptable to the Mortgagor.
- (vi) The Mortgagor and the Beneficiary shall maintain builder's risk insurance including coverage under the Illinois Structural Work Act, upon any work done or materials furnished under construction contracts in the amount of one hundred percent (100%) of the insurable value of the contracts in the name of the Mortgagor, the Mortgagor, the Beneficiary and the contractors, as their respective interests may appear, and such policy shall contain a standard mortgage clause in form and substance acceptable to the Mortgagor.
- (vii) If the Premises are located in an area which has been identified by the Secretary of Housing and Urban Development as a flood hazard area, the Mortgagor and the Beneficiary will keep the Premises insured against loss by flood for the term of the Note in an amount equal to the lesser of the outstanding principal balance of the Note or the maximum limit of coverage available for the Premises and the buildings under the National Flood Insurance Act of 1968, and such policy shall contain a standard mortgage clause in form and substance acceptable to the Mortgagor.
- (viii) The Mortgagor and the Beneficiary shall carry and maintain such other customary insurance, in such amounts and with such customary coverages, endorsements and payee designations as may be reasonably required by the Mortgagor.
- (b) All insurance policies shall be in form and substance acceptable to the Mortgagor and shall be issued by insurance companies acceptable to the Mortgagor.
- (c) The standard mortgage clause shall name the Mortgagor as "first mortgagee" as its interest may appear, without contribution, and shall provide, among other things, that the Mortgagor shall have the right to receive loss payment from the insurer under any of the following circumstances:
- (i) The insured's claim is denied due to the insured's acts or the insured's failure to comply with the terms of the policy; or
- (ii) The Mortgagor has brought a foreclosure action

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or other similar proceedings against the  
Premises.

- (d) All insurance policies containing a standard mortgage clause shall also contain a waiver of subrogation endorsement in favor of the Mortgagee.
- (e) All insurance policies shall provide that the Mortgagee shall receive at least ten (10) business days' written notice prior to cancellation or non-renewal for reason of nonpayment and at least thirty (30) days' written notice prior to cancellation or non-renewal by any party for any other reason.
- (f) The Mortgagor and the Beneficiary hereby pledge, assign and shall deliver all insurance policies, including additional and renewal policies, to the Mortgagee. In case of insurance about to expire, the Mortgagor or the Beneficiary shall deliver to the Mortgagee all renewal policies at least thirty (30) days prior to the respective expiration date.
- (g) The Mortgagor and the Beneficiary shall have the right and responsibility to adjust any loss with the insurer involved and to conduct any negotiations in connection therewith; **PROVIDED THAT** no settlement of claims in excess of \$5,000.00 shall be effected without the prior written consent of the Mortgagee.
- (h) All Net Proceeds of insurance policies containing a standard mortgage clause shall be payable to the Mortgagee, and the Mortgagee may apply all Net Proceeds in a manner as determined in its sole discretion.
- (i) If prior to full satisfaction of the Liabilities the Premises are destroyed, in whole or in part, or are damaged by fire or other casualty, the Mortgagor and the Beneficiary shall promptly give written notice thereof to the Mortgagee.
- (j) The Mortgagor and the Beneficiary agree to review the appraised value of the Premises annually with their insurance specialist and to increase the amount of insurance as is necessary, so that at all times, the respective amounts of any such insurance shall meet the requirements of this Paragraph 3.05. The Mortgagor or the Beneficiary shall provide the Mortgagee with written evidence of such annual review, in form and substance acceptable to the Mortgagee, within ten (10) days thereafter.

3.06 Upon the request of the Mortgagee, the Mortgagor or the Beneficiary shall deliver or cause to be delivered to the Mortgagee originals or copies, as the Mortgagee requests, of all leases of all or any portion of the Premises; (with assignments of such leases in form and substance acceptable to the Mortgagee;) the Mortgagor and the Beneficiary shall not, without the Mortgagee's prior written consent, procure, permit or accept any prepayment, discharge or compromise of any rent or release any tenant from any obligation (except at the termination of such tenant's lease term as specified in the lease or upon a tenant default under the lease), at any time while the Liabilities secured hereby remain unpaid.

3.06.1 The Mortgagor and the Beneficiary shall enforce or shall cause to be enforced all leases while the Liabilities secured hereby remain unpaid, and all leases shall contain provisions of subordination and attornment in favor of the Mortgagee in form and substance acceptable to the Mortgagee.

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- 1.07 Any award of damages resulting from condemnation proceedings, exercise of the power of eminent domain, or the taking of the Premises for public use are hereby transferred, assigned and shall be paid to the Mortgagee and such award or any part thereof may be applied by the Mortgagee in the order the Mortgagee in its sole discretion may elect, after the payment of all of the Mortgagee's expenses, including reasonable attorneys' and paralegals' fees and costs, to the reduction of the liabilities secured hereby, and the Mortgagee is hereby authorized, on behalf and in the name of the Mortgagor, to execute and deliver valid acquittances and to appeal from any such award.
- 1.08 Notwithstanding any other provisions of this Mortgage, no sale, lease (except in the ordinary course of the operation of the Premises), mortgage, trust deed, grant by the Mortgagor or the Beneficiary of an encumbrance of any kind, conveyance, transfer of occupancy or possession, contract to sell, or transfer of the Premises, or any part thereof, or sale or transfer of ownership of any beneficial interest or power of direction in a land trust which holds title to the Premises, may be made without the prior written consent of the Mortgagee.
- 1.09 If the Mortgagee makes any payment authorized by this Mortgage relating to taxes, assessments, charges, liens, security interests or encumbrances, the Mortgagee may do so according to any bill, statement or estimate received from the appropriate party claiming such funds without inquiry into the accuracy or validity of such bill, statement or estimate or into the validity of the lien, encumbrance, security interest, tax, assessment, sale, forfeiture, tax claim or title or claim thereof.
- 1.10 (A) Unless otherwise agreed to in writing, the Mortgagor and the Beneficiary agree to deposit at the place as the Mortgagee may, from time to time, in writing appoint and, in the absence of appointment then at the office of the Mortgagee commencing on the Closing Date and monthly thereafter until the liabilities secured by this Mortgage are fully paid, tax reserve amounts which shall in the aggregate be equal to the sum of the amount of the accrued real estate taxes and assessments with respect to the Premises due and payable to the Cook County Collector when such real estate taxes and assessments are due. Notwithstanding the foregoing, if the taxes or assessments for the last ascertainable year exclude the buildings or improvements or any part thereof, now constructed or to be constructed on the Premises, then the amount of the deposits to be paid pursuant to this subparagraph 1.10(A) shall be based upon the reasonable estimate of the Mortgagee as to the amount of taxes and assessments which shall be levied or assessed. The deposits are to be held in trust without interest and are to be used for the payment of taxes and assessments (general and special) on the Premises next due and payable when they become due. If the funds so deposited are insufficient to pay any of the taxes or assessments (general or special) for any year when the same shall become due and payable, the Mortgagor and the Beneficiary shall, within ten (10) days after receipt of a notice and demand from the Mortgagee deposit the additional funds as may be necessary to pay such taxes and assessments (general and special). So long as no Default exists, any excess shall be applied to subsequent deposits for taxes and assessments or upon repayment of the liabilities in full.
- 1.10 (B) Upon request by the Mortgagee, concurrent with and in addition to the deposits for general and special

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Under the provisions hereof, the Mortgagee and the Beneficiary shall deposit with the Mortgagee a sum equal to the premiums that will next become due and payable on any insurance policies required hereunder, divided by the number of payments due annually under the Note hereunder so that such payments are sufficient to pay the insurance premiums when they become due and payable. All sums deposited hereunder shall be held in trust without interest for the purpose of paying the insurance premiums.

5.19 (c) The Mortgagee and the Beneficiary shall keep and maintain all deposit accounts relating to the operation of the Premises or such other deposit accounts as agreed to by Mortgagee in writing at the Mortgagee while the liabilities secured hereby remain outstanding.

5.20 The Mortgagee or the Beneficiary shall keep and maintain or shall cause to be kept and maintained, at all times, full, true and accurate books of accounts, in sufficient detail to adequately and correctly reflect the results of the operation of the Premises, which books and the records relating thereto shall be open to inspection and copying by the Mortgagee or its representatives during ordinary business hours, and the Mortgagee and the Beneficiary shall furnish the Mortgagee such financial information as follows:

- (a) The Mortgagee or the Beneficiary shall submit or shall cause to be submitted to the Mortgagee on an annual basis or more frequently as the Mortgagee may request from time to time, annual financial statements, including statements of cash receipts and disbursements ("Financial Statements"), for the Premises in scope, form and substance acceptable to the Mortgagee along with a Certificate of No Default signed by an individual or entity required by the Mortgagee. The Mortgagee or the Beneficiary shall also furnish or cause to be furnished such other financial statements, financial reports and credit reports and information concerning the Mortgagee, the Beneficiary, the Premises and the business existing in the Premises as the Mortgagee may reasonably request, all in form, scope and substance acceptable to the Mortgagee and with such acknowledgments as the Mortgagee may specify.
- (b) The Mortgagee and the Beneficiary shall submit or cause to be submitted to the Mortgagee on an annual basis and within one hundred twenty (120) days after the end of its fiscal or calendar year, or more frequently as the Mortgagee may request from time to time, their respective Financial Statements prepared by and certified as true and accurate by an individual or entity required by the Mortgagee in accordance with generally accepted accounting principles consistently applied.
- (c) The Mortgagee and the Beneficiary shall annually submit or cause to be submitted within one hundred twenty (120) days after filing, if so requested by the Mortgagee, copies of their respective Federal income tax returns filed for the immediately preceding fiscal or calendar year.
- (d) The Mortgagee and/or the Beneficiary shall annually submit or shall cause to be annually submitted within thirty (30) days after the end of each calendar year, or more frequently as the Mortgagee may request from time to time, a current rent roll for the Premises in form and substance acceptable to the Mortgagee, certified as true and accurate by an individual or entity required by the Mortgagee.

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(c) The Mortgagee and the Beneficiary shall cause each Guarantor to annually submit to the Bank within one hundred twenty (120) days after the end of such Guarantor's calendar or fiscal year, as the case may be, or more frequently as the Mortgagee may request from time to time, such Guarantor's financial statements prepared by an individual or entity required by the Mortgagee in accordance with generally accepted principals consistently applied and signed by such Guarantor.

1.12 The Mortgagee and the Beneficiary shall maintain in full force and effect their respective existing corporate, partnership or trust existence, as the case may be, and all licenses, franchises, leases, contracts and other rights necessary to the profitable conduct of their respective businesses, including, without limitation, all notices, permits or licenses, if any, filed or obtained with regard to compliance with Environmental Laws. The Mortgagee and the Beneficiary shall continue in and limit their respective operations to the same general line or type of business as that presently conducted by the Mortgagee and the Beneficiary and shall comply with all applicable laws and regulations of all federal, state or local governmental authorities, including, without limitation, all Environmental Laws.

1.13 The Mortgagee and the Beneficiary shall cause, and shall use their best efforts to cause any and all tenants or other operators of the Premises and any other real property of the Mortgagee, to conduct their respective businesses so as to comply in all material respects with all Environmental Laws; **PROVIDED, HOWEVER,** nothing contained in this Paragraph 1.13 shall prevent the Mortgagee or the Beneficiary from contesting, in good faith and by appropriate legal proceedings, any such laws, regulation or interpretation or application thereof; **PROVIDED, FURTHER,** the Mortgagee and the Beneficiary shall comply with the order of any court or other governmental body of applicable jurisdiction relating to such Environmental Laws unless the Mortgagee or the Beneficiary shall currently be prosecuting an appeal or proceedings for review and shall have secured a stay of enforcement or execution or other arrangement postponing enforcement or execution pending such appeal or proceedings for review.

1.14 The Mortgagee and the Beneficiary shall not permit the presence of any hazardous substances, hazardous facilities, pollutants or contaminants, including asbestos in, on or under the surface of Premises. If the Mortgagee determines at any time that asbestos exists in, on or under the Premises and may present a health hazard, or if removal of any hazardous substance from the Premises in or may be required by any applicable governmental or regulatory authorities or pursuant to any applicable laws or regulations, the Mortgagee may, in its sole discretion, require the removal or containment of such asbestos or any other hazardous substances at the Mortgagee's and Beneficiary's sole expense.

1.15 The Mortgagee and the Beneficiary shall use their best efforts to cause all tenants or other operators of the Premises or any other real property of the Mortgagee to dispose of any and all hazardous substances or solid waste generated at the Premises or such other real property only at facilities and by carriers maintaining compliance with the Environmental Laws. To the best of the Mortgagee's and the Beneficiary's knowledge, all such tenants are operating in compliance with valid permits under RCRA and any other Environmental Law, and the Mortgagee and the Beneficiary shall use its best efforts to obtain certification of disposal from all contractors employed in connection with the transport or disposal of such hazardous substances or solid waste.

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- 4.16 At the Mortgagee's request, from time to time, the Mortgagor and the Beneficiary shall establish and maintain, or shall cause to be established and maintained, at their sole expense, a system to assure and monitor continued compliance with the Environmental Laws by any and all leasees and operators of the Premises and any other real property of the Mortgagor, which system shall include annual reviews of such compliance by employees or agents of the Mortgagor and the Beneficiary who are familiar with the requirements of the Environmental Laws, and at the request of the Mortgagee no more than once each year, detailed review of such compliance (the "Environmental Report") by an environmental consulting firm acceptable to the Mortgagee; **PROVIDED, HOWEVER**, that if any Environmental Report indicates any violation of Environmental Laws, such system shall include at the request of the Mortgagee within nine (9) months of the date of such Environmental Report, a detailed review of the status of such violation (a "Supplemental Report") by such environmental consultant. The Mortgagor shall furnish or cause to be furnished an Environmental Report or such Supplemental Report to the Mortgagee within forty-five (45) days after the Mortgagee so requests, together with such additional information as the Mortgagee may request.
- 4.17 If the Mortgagor, the Beneficiary or any leasee or operators of the Premises shall receive (a) notice that any violation of any Environmental Law may have been committed or is about to be committed by the Mortgagor; (b) notice that any administrative or judicial complaint or order has been filed or is about to be filed against the Mortgagor alleging violation of any Environmental Law or requiring the Mortgagor to take any action in connection with the release or threatened release of hazardous substances or solid waste into the environment; or (c) any notice from a federal, state, or local governmental agency, court or private party alleging that the Mortgagor may be liable or responsible for costs associated with a response to or cleanup of a release or disposal of a hazardous substance or solid waste into the environment or any damages caused thereby, including without limitation any notice that the Mortgagor is a "potentially responsible party" as defined by CERCLA, the Mortgagor or the Beneficiary shall provide the Mortgagee with a copy of such notice within ten (10) days of the Mortgagee's receipt thereof. The Mortgagor or the Beneficiary shall provide the Mortgagee with notices of the enactment or promulgation of any Environmental Law which may result in a material adverse change in its business, financial condition, or operations of the Mortgagor or the Beneficiary within fifteen (15) days after the Mortgagor or the Beneficiary obtains knowledge thereof.
- 4.18 The Mortgagor and the Beneficiary shall permit and shall cause any Manager to permit the Mortgagee or any person designated by the Mortgagee, from time to time hereafter, to call at the Mortgagor's, the Beneficiary's or any Manager's business, the Premises or place or places of business (or any other place where the collateral or any information relating thereto is kept or located) during reasonable business hours, without hindrance or delay, to:
- (a) inspect, audit, check and make copies of and extracts from the Mortgagor's, the Beneficiary's or any Manager's books, records, journals, orders, receipts, correspondence and other data relating to the Mortgagor's, the Beneficiary's or any Manager's business, the Premises or to any transactions between the parties hereto and whether such items or data are maintained in accordance with the Mortgagor's, the Beneficiary's and any Manager's standard operating procedures or pursuant to this Mortgage;

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- (b) verify with the Mortgagor concerning the Premises as the Mortgagee may consider reasonable under the circumstances;
- (c) discuss the affairs, finances and business of the Mortgagor, the Beneficiary or any Manager; and
- (d) inspect the Premises, take soil borings and conduct any other tests or procedures at the Mortgagor's, and the Beneficiary's expense and inspect any books, records, journals, orders, receipts, correspondence, notices, permits or licenses, with respect to compliance with Environmental Laws, and to determine, at the Mortgagor's and the Beneficiary's expense, whether any hazardous substances are present in, on or under the Premises or in, on or under any other real property of the Mortgagor.

The Mortgagor and the Beneficiary shall deliver to the Mortgagee, within ten (10) days of request therefor, any documents necessary to obtain records from any person maintaining such records. The Mortgagor and the Beneficiary shall pay on demand or within ten (10) days thereafter all costs and expenses incurred by the Mortgagee in acquiring information pursuant to this Paragraph 3.18, with interest thereon at a per annum rate equivalent to the Default Rate set forth in the Note. All expenditures incurred pursuant to the powers herein contained shall become a part of the Liabilities secured hereby. The Mortgagee shall not be liable to account to the Mortgagor or the Beneficiary for any action taken pursuant hereto.

- 3.19 The Mortgagor and the Beneficiary shall pay all fees and commissions of any Broker and shall indemnify and hold the Mortgagee harmless from any and all claims, suits, actions, losses, damages and expenses, including reasonable attorneys' and paralegals' fees and costs, relating to the Loan, by any Broker or other person or entity for a commission or finder's fee as a result of the Mortgagee's making the Loan. This indemnity shall survive the consummation of the transactions contemplated by the Financing Loan Documents and satisfaction in full of the Liabilities.
- 3.20 The Mortgagor and the Beneficiary shall not directly or indirectly apply any part of the proceeds of the loan to the purchasing or carrying of any "margin stock" within the meaning of Regulation U of the Board of Governors of the Federal Reserve System, or any regulations, interpretations or rulings thereunder.
- 3.21 The Mortgagor and the Beneficiary agree that the Loan shall not be assumed without the prior written consent of the Mortgagee. If the Mortgagee consents to the assumption, the assuming party may be required to pay to the Mortgagee, at the time of the assumption, a fee to be determined by the Mortgagee.
- 3.22 The Mortgagee shall not assume or be deemed to assume any responsibility, liability, or obligation for any filings, payments of taxes, assessments or other charges or any other actions required to be made or taken (as the case may be) which have been or which have not been made or taken with respect to the compliance with the requirements of any Environmental Law, provided, however, that in the event of the imposition or assumption for any reason whatsoever of any such responsibility, liability, or obligation, the Mortgagor and the Beneficiary agree to indemnify and hold the Mortgagee harmless from and against any and all claims; liabilities; obligations; losses; actual, consequential, indirect or punitive damages; penalties; actions; judgments; suits; costs; expenses, including without

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fees and costs of attorneys and paralegals' fees and costs or disbursements of any kind or nature whatsoever, including without limitation title insurance premiums, *escrow, recording, survey and appraisal fees, transfer taxes and stamp taxes and any diminution in the value of the Premises, which may be imposed on, incurred by or asserted against the Mortgagee or the Premises, or both, in any way relating to or arising under this Mortgage, under any of the other Financing Loan Documents or under applicable federal, state and local laws, regulations and ordinances.*

## 4. REMEDIES UPON DEFAULT.

4.01 Upon or after the occurrence of a Default, at the sole election of the Mortgagee and without notice to the Mortgagor, the Mortgagee may declare all Liabilities to be immediately due and payable, and the Mortgagor shall pay all costs and expenses of the Mortgagee, including without limitation reasonable attorneys' and paralegals' fees and costs and expenses incurred in connection with this Mortgage and all expenses incurred in the enforcement or attempted enforcement of the Mortgagee's rights in the Premises and other costs and expenses incurred in connection with the disposal of the Premises, with interest thereon at a per annum rate equivalent to the Default Rate set forth in the Note. All expenditures incurred pursuant to the powers herein shall become a part of the Liabilities secured hereby. The Mortgagee shall not be liable to account to the Mortgagor or the Beneficiary for any action taken pursuant hereto.

4.02 Upon or after the occurrence of a Default, the Mortgagee may proceed to protect and enforce the Mortgagee's rights hereunder by any action at law, suit in equity or other appropriate proceedings, whether for the specific performance of any agreement contained herein, or for an injunction against the violation of any of the terms hereof, or in aid of the exercise of any power granted hereby or by law.

4.03 When the Liabilities secured hereby shall become due, whether by acceleration or otherwise, the Mortgagee also shall have the right to foreclose the lien of this Mortgage. Upon the bringing of any suit to foreclose this Mortgage, the Mortgagee shall, as a matter of right, without notice and without giving bond to the Mortgagor or anyone claiming by, under or through the Mortgagor, and without regard to the solvency or insolvency of the Mortgagor or the then value of the Premises, to the extent permitted by applicable law, be entitled to have itself appointed and become mortgagee in possession for all or any part of the Premises and the rents, issues and profits thereof, with such power as the court making such appointment shall confer, and the Mortgagor hereby consents to the appointment of the Mortgagee as such mortgagee in possession and shall not oppose any such appointment. Any such mortgagee in possession may, to the extent permitted under applicable law, without notice, enter upon and take possession of the Premises or any part thereof by force, summary proceedings, ejectment or otherwise, and may remove the Mortgagor or other persons and any and all property with respect thereto or any part thereof during the pendency of any foreclosure.

4.04 In any suit to foreclose the lien of this Mortgage, there shall be allowed and included an additional Liabilities in the judgment of foreclosure all expenditures and expenses which may be paid or incurred by or on behalf of the Mortgagee for reasonable attorneys' and paralegals' fees and costs, appraisers' fees, outlays for documentary and expert evidence, stenographers' charges, publication costs and costs of procuring all abstracts of title, title searches and examinations, title insurance policies, Torrens certificates, tax and lien searches, and similar data and information with respect to title as

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The Mortgagor may, in order that it may be necessary either to prosecute the foreclosure suit or to evidence to buyers at any foreclosure sale, All of the foregoing items, which may be expended after entry of the foreclosure judgment, may be obligated by the Mortgagor. All expenditures and expenses mentioned in this Paragraph 4.04, when incurred or paid by the Mortgagor shall become additional liabilities secured hereby and shall be immediately due and payable, with interest thereon at a rate equivalent to the Default Rate set forth in the Note. The Mortgagor shall not be liable to account to the Mortgagor or the Beneficiary for any action taken pursuant hereto. This Paragraph 4.04, shall also apply to any expenditures or expenses incurred or paid by the Mortgagor or on behalf of the Mortgagor in connection with (a) any proceeding, including without limitation, probate and bankruptcy proceedings, to which the Mortgagor shall be a party, either as plaintiff, claimant or defendant, by reason of this Mortgage or any indebtedness secured hereby; (b) any preparation for the commencement of any suit for the foreclosure of this Mortgage after accrual of the right to foreclose whether or not actually commenced or preparation for the commencement of any suit to collect upon or enforce the provisions of the Note or any instrument which secures the Note after default, whether or not actually commenced; or (c) any preparation for the defense of any threatened suit or proceeding which might affect the Premises or the security hereof, whether or not actually commenced.

4.05 The Mortgagor and the Beneficiary for themselves and for all who may claim through or under the Mortgagor waive any and all right to have the property and estate comprising the Premises marshalled upon any foreclosure of the lien hereof, and agrees that any court having jurisdiction to foreclose such lien may order the Premises sold as an entirety.

4.06 The proceeds of any foreclosure sale shall be distributed and applied in the following order of priority: first, on account of all costs and expenses incident to the foreclosure proceedings, including all the items that are mentioned in Paragraph 4.04, above; second, all other items which under the terms of this Mortgage constitute indebtedness secured by this Mortgage additional to that evidenced by the Note, with interest thereon as herein provided; third, all principal and interest remaining unpaid on the Note and the liabilities (first to interest and then to principal); fourth, any surplus to the Mortgagor or the Mortgagor's legal representatives, successors or assigns, as their rights may appear.

4.07 Upon, or at any time after the filing of a complaint to foreclose this Mortgage, the court in which such suit is filed may appoint a receiver of the Premises. The receiver's appointment may be made either before or after entry of judgment of foreclosure, without notice, without regard to the solvency or insolvency of the Mortgagor at the time of application for the receiver and without regard to the then value of the Premises or whether the Premises shall be then occupied as a homestead or not. The Mortgagor may be appointed as the receiver. Such receiver shall have power to collect the rents, issues and profits of the Premises during the pendency of the foreclosure suit and, in case of an entry of judgment of foreclosure, during the full statutory period of redemption, if any, whether there be redemption or not, as well as during any further times when the Mortgagor, except for the intervention of the receiver, would be entitled to collect the rents, issues and profits. Such receiver shall also have all other powers which may be necessary or are usual for the protection, possession, control, management and operation of the Premises. The court in which the foreclosure suit is filed may from time to time authorize the receiver to apply the net

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including all the fees for recording this instrument in whole or in part of the indebtedness incurred hereby, or incurred by any judgment foreclosing this Mortgage, or any tax, special assessment or other lien or encumbrance which may be or become superior to the lien hereof or of the judgment, and the deficiency judgment against the Mortgagor or any Guarantor in case of a foreclosure sale and deficiency.

## 5. WAIVER OF RIGHTS OF REDEMPTION AND REINSTATEMENT.

5.01 THE MORTGAGOR AND THE BENEFICIARY AGREE AND ACKNOWLEDGE THAT, NOTWITHSTANDING ANY PROVISION OF ANY STATE OR FEDERAL STATUTE, RULE OR REGULATION CURRENTLY IN FORCE OR WHICH MAY BE ENACTED OR ADOPTED SUBSEQUENT TO THE DATE OF THIS MORTGAGE, THE MORTGAGOR SHALL HAVE THE EXCLUSIVE RIGHT OF REDEMPTION FROM ANY ORDER OR JUDGMENT OF FORECLOSURE OF THIS MORTGAGE, WHICH RIGHT SHALL EXPIRE NINETY (90) DAYS FROM THE DATE OF ENTRY OF ANY ORDER OR JUDGMENT OF FORECLOSURE, AND THE MORTGAGOR AND THE BENEFICIARY HEREBY WAIVE ANY AND ALL RIGHTS OR PERIODS OF REDEMPTION INCONSISTENT WITH THIS PARAGRAPH FROM ANY ORDER OR JUDGMENT OF FORECLOSURE OF THIS MORTGAGE ON BEHALF OF THE MORTGAGOR AND THE BENEFICIARY AND ON BEHALF OF EACH AND EVERY PERSON ACQUIRING ANY INTEREST IN OR TITLE TO THE PREMISES AS OF OR SUBSEQUENT TO THE DATE OF THIS MORTGAGE.

5.02 THE MORTGAGOR AND THE BENEFICIARY HEREBY WAIVE ANY AND ALL RIGHTS OF REINSTATEMENT PURSUANT TO THE LAWS OF THE STATE OF ILLINOIS REGARDING THE FORECLOSURE OF MORTGAGES ON THE MORTGAGOR'S OWN BEHALF AND ON BEHALF OF EACH AND EVERY PERSON ACQUIRING ANY INTEREST IN OR TITLE TO THE PREMISES AS OF OR SUBSEQUENT TO THE DATE OF THIS MORTGAGE.

## 6. MISCELLANEOUS.

6.01 This Mortgage and all applicable provisions hereof shall be binding upon the Mortgagor and the Beneficiary and upon the Mortgagor's and the Beneficiary's respective heirs, estate, legal representatives, successors and assigns and all persons or parties claiming by, under or through the Mortgagor, and shall inure to the benefit of the Mortgage and its successors and assigns.

6.02 All notices, certifications and other communications hereunder shall be sufficiently given and shall be deemed given when mailed by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

To the Mortgagor: LaSalle National Bank, N.A.  
115 South LaSalle Street  
Room 411  
Chicago, Illinois 60604  
Attn: Land Trust Division

To the Beneficiary: Jacob H. Berg  
Sertilio Ltd.  
1777 Shermer Road  
Northbrook, Illinois 60062

To the Mortgagor: The Naperville Bank  
1112 South Washington  
Naperville, Illinois 60566-0355  
Attn: Mr. Laurence G. Foy  
President

No change in address of the Mortgagor or the Beneficiary shall be effective unless sent in writing to the other party at the above address.

6.03 The singular shall include plural, the plural shall mean the singular and use of any gender shall be applicable to all genders.



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6.04 This is one of the purposes of this Note and this Mortgage.

6.05 THE MORTGAGOR AND THE BENEFICIARY WAIVE PERSONAL SERVICE OF ANY AND ALL PROCEEDS UPON THE MORTGAGOR AND THE BENEFICIARY, AND CONSENT THAT ALL SUCH SERVICE OF PROCEEDS BE MADE BY MESSENGER OR A REPUTABLE OVER-NIGHT DELIVERY SERVICE DIRECTED TO THE MORTGAGOR AND THE BENEFICIARY AT THE ADDRESS SET FORTH ABOVE AND THAT SERVICE SO MADE SHALL BE DEEMED TO BE COMPLETED UPON DELIVERY.

6.06 THE MORTGAGOR AND THE BENEFICIARY WAIVE ALL RIGHTS TO TRIAL BY JURY.

6.07 This Mortgage and the provisions hereof may be amended, modified, waived, discharged or terminated only in writing signed by an authorized individual on behalf of the Mortgagee and by any other party, if any, against which enforcement of the amendment, modification, waiver, discharge or termination is sought.

6.08 The Mortgagee may, but need not, make any payment or perform any act required of the Mortgagor and/or the Beneficiary hereunder in any form and manner deemed sufficient by the Mortgagee, and the Mortgagee may, but need not, make full or partial payments of principal or interest on any encumbrance, lien or security interest affecting the Premises, and the Mortgagee may purchase, discharge, compromise or settle any tax lien or other lien or title or claim thereof, or redeem from any tax sale or foreclosure affecting the Premises or contest any tax or assessment. All moneys paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including reasonable attorneys' and accountants' fees and costs, and any other funds advanced by the Mortgagee to protect the Premises or the lien herein, plus reasonable compensation to the Mortgagee for each action concerning which action herein authorized may be taken, shall be so much additional indebtedness secured hereby and shall become immediately due and payable without notice and with interest thereon at a per annum rate equivalent to the past maturity rate set forth in the Note. The Mortgagee shall not be liable to account to the Mortgagor or the Beneficiary for any action taken pursuant hereto.

6.09 The Mortgagor and the Beneficiary hereby bargain, sell, assign and not over to the Mortgagee all rents, issues and profits of the Premises which, whether before or after foreclosure, until the full and complete payment of the liabilities hereunder, shall accrue and be owing for the use and occupation of the Premises or of any part thereof. The Mortgagee and the Beneficiary hereby constitute and appoint the Mortgagee an attorney in fact irrevocably in the Mortgagor's and the Beneficiary's name to receive, collect and receipt for all sums due or owing for such use, rents and occupation, as the same may accrue and out of the amount so collected to pay and discharge all unpaid indebtedness hereby incurred. The Mortgagee may enter and take possession of the Premises and manage and operate the Premises and take any action which, in the Mortgagee's judgment, is necessary or proper to conserve the value of the Premises. The Mortgagee may also take possession of, and for these purposes use, any and all personal property contained in the Premises and used by the Mortgagor or the Beneficiary in the rental or leasing of the Premises or any part thereof. All expenditures incurred pursuant to the powers herein contained shall become a part of the liabilities secured hereby. The Mortgagee shall not be liable to account to the Mortgagor or the Beneficiary for any action taken pursuant hereto other than to account for any rents actually received by the Mortgagee.

6.10 No action for the enforcement of the lien or of any provision of this Mortgage shall be subject to any defense which would not be good and available to the

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partly in compliance with the law in effect on it, law upon the Note.

- 6.11 The remedy or right of the Mortgagee hereunder shall be exclusive. Each right or remedy of the Mortgagee with respect to the Obligation, this Mortgage or the Promises shall be in addition to every other remedy or right now or hereafter existing at law or in equity. No delay by the Mortgagee in exercising, or omitting to exercise, any remedy or right accruing on default shall impair any such remedy or right, or shall be construed to be a waiver of any such default, or acquiescence therein, or shall affect any subsequent default of the same or a different nature. Every such remedy or right may be exercised concurrently or independently, and when and as often as may be deemed expedient by the Mortgagee. Inaction of the Mortgagee shall never be considered as a waiver of any right accruing to the Mortgagee on account of any default hereunder on the part of the Mortgagor or the Beneficiary.
- 6.12 This Mortgage and the documents executed and delivered pursuant hereto constitute the entire agreement between the parties.
- 6.13 This Mortgage has been made, executed and delivered to the Mortgagee in Naperville, Illinois, and shall be construed in accordance with the internal laws of the State of Illinois (excluding conflicts of law rules). Wherever possible, each provision of this Mortgage shall be interpreted in such manner as to be effective and valid under applicable law. If any provisions of this Mortgage are prohibited by or determined to be invalid under applicable law, such provisions shall be ineffective to the extent of such prohibitions or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Mortgage.
- 6.14 This Mortgage may be signed in any number of counterparts with the same effect as if the signatures thereto and hereto were upon the same instrument.

RIDER ATTACHED TO AND MADE A PART OF THE TRUST DEED OR MORTGAGE

DATED JULY 12, 1983 UNDER TRUST NO. 59021

This Mortgage or Trust Deed in the nature of a mortgage is executed by LA SALLE NATIONAL TRUST, N.A., not personally, but as Trustee under Trust No. 59021 in the exercise of the power and authority conferred upon and vested in it as such Trustee (and said LA SALLE NATIONAL TRUST, N.A. heretofore warrants that it possesses full power and authority to execute the instrument) and it is expressly understood and agreed that nothing contained herein or in the note, or in any other instrument given to evidence the indebtedness secured hereby shall be construed as creating any liability on the part of said mortgagor or grantor, or on said LA SALLE NATIONAL TRUST, N.A. personally to pay said note or any interest that may accrue thereon, or any indebtedness accruing hereunder, or to perform any covenant, either express or implied, herein contained, all such liability, if any, being hereby expressly waived by the mortgagor or Trustee under said Trust Deed, the legal owners or holders of the note, and by every person now or hereafter claiming any right or security hereunder, and that so far as the mortgagor or grantor and said LA SALLE NATIONAL TRUST, N.A. personally are concerned, the legal holders of the note and the owner or owners of any indebtedness accruing hereunder shall look solely to the premises hereby mortgaged or conveyed for the payment thereof by the enforcement of the lien created in the manner herein and in said note provided or by action to enforce the personal liability of the guarantor or guarantors, if any. Trustee does not warrant, indemnify, defend title nor is it responsible for any environmental damage.

# UNOFFICIAL COPY

6.19 In the event the Mortgagee in a Land Trustee, then this Mortgage is exercised by the undesignated trustee, not personally, but as trustee in the exercise of the power and authority conferred upon and vested in it as the trustee, and insofar as the trustee is concerned, in payable only out of the trust and the which in part in securing the payment of the liability, and through enforcement of the provisions of the Note and any other collateral or guaranty from time to time securing payment of the liability, no personal liability shall be asserted or be enforceable against the trustee, because or in respect of this mortgage or the money, issue or transfer thereof, all such personal liability of the trustee, if any, being expressly waived in any manner, trustee does not warrant.

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party intervening the same in an action at law upon the Note.  
 6.22 No remedy or right of the Mortgagee hereunder shall be exclusive, each right or remedy of the Mortgagee with respect to the liability, then Mortgage or the Premises shall be the same as if the same were not so stated.

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

WITNESS the hands and seals of the Notary and the Beneficiary the day and year set forth above.

Address:  
115 South LaSalle  
Room 311  
Chicago, Illinois 60603

LaSalle National Trust, N.A. as  
Trustee, AND NOT PERSONALLY,  
under a Trust Agreement dated  
July 17, 1978 and known as  
Trust No. 54025

By: *[Signature]*  
Title: *[Signature]*

ATTEST:

By: *[Signature]*  
Title: ASSISTANT SECRETARY

BENEFICIARY:

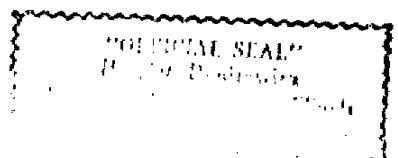
Jacob H. Berg Declaration of  
Trust dated June 4, 1990

By: *[Signature]*  
Jacob H. Berg, Trustee

STATE OF ILLINOIS )  
COUNTY OF COOK ) SS.

I, *[Signature]*, a Notary Public in and for  
the County of Cook, in the State of Illinois, do hereby certify that  
*[Signature]* of LaSalle National Trust, N.A., a national  
banking association and *[Signature]* of  
said association personally known to me to be the same person(s)  
whose names are subscribed to the foregoing instrument as such  
*[Signature]* and *[Signature]*, respectively, appeared  
before me this day in person and acknowledged that they signed and  
delivered the said instrument as their own free and voluntary acts,  
and as the free and voluntary act of said association, as Trustee,  
for the uses and purposes therein set forth; and the said  
*[Signature]* did also then and there acknowledge that she, as  
custodian of the corporate seal of said association, affixed the  
said corporate seal of said association, to said instrument as her  
own free and voluntary act, and as the free and voluntary act of  
said association, as Trustee, for the uses and purposes therein set  
forth.

GIVEN under my hand and Notarial Seal this *7* day of July,  
1993.



*[Signature]*  
Notary Public

My Commission Expires:

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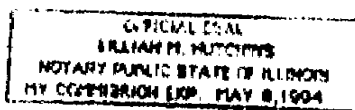
STATE OF ILLINOIS )  
COUNTY OF COOK ) SS.

I, *Brian M. Hutchins*, a Notary Public in and for the County and State aforesaid, do hereby certify that Jacob H. Berg, personally known to me to be the same person whose name in an Trustor of the Jacob H. Berg Declaration of Trust, dated June 4, 1990 subscribed to the foregoing instrument, *appeared before me this day in person and acknowledged to me that he signed and delivered said instrument as his own free and voluntary act, for the uses and purposes therein set forth.*

GIVEN under my hand and Notarial Seal this *21* day of July, 1994.

*Brian M. Hutchins*  
Notary Public

My Commission Expires:



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TO  
MORTGAGE

## LEGAL DESCRIPTION

### PARCEL 1:

THE WEST 715.50 FEET, (EXCLUDING THEREFROM THE WEST 50 FEET THEREOF) OF A PART OF A TRACT DESCRIBED AS FOLLOWS, TO WIT:

THAT PART OF THE NORTHWEST  $\frac{1}{4}$  OF SECTION 15, TOWNSHIP 42 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 15, RUNNING THENCE EAST ON THE NORTH LINE OF SAID SECTION 701.9 FEET TO THE WEST LINE OF THE RIGHT OF WAY OF THE CHICAGO, MILWAUKEE AND ST. PAUL RAILROAD; THENCE SOUTHEASTERLY ON A LINE FORMING AN ANGLE OF 106 DEGREES 26 MINUTES 0 SECONDS WITH SAID NORTH LINE (SAID LINE BEING THE WESTERLY LINE OF SAID RIGHT OF WAY) 1,492.9 FEET TO A POINT; THENCE CONTINUING SOUTHEASTERLY ON A LINE 1,280 FEET TO A POINT IN THE SOUTH LINE OF SAID NORTHWEST  $\frac{1}{4}$ , 1,396.3 FEET EAST OF THE  $\frac{1}{4}$  CORNER; THENCE WEST ALONG SAID SOUTH LINE TO SAID  $\frac{1}{4}$  CORNER; THENCE NORTH 2,641.75 FEET TO THE PLACE OF BEGINNING; THAT PART OF SAID TRACT BEING DESCRIBED AS THAT PORTION OF SAID TRACT LYING SOUTH OF A LINE DRAWN PARALLEL TO THE NORTH LINE OF SAID SECTION THROUGH A POINT ON THE WEST LINE OF SAID SECTION 1,091.1 FEET SOUTH OF THE NORTHWEST  $\frac{1}{4}$  CORNER OF SAID SECTION, EAST TO THE WEST LINE OF THE RIGHT OF WAY OF THE CHICAGO, MILWAUKEE AND ST. PAUL RAILROAD AND NORTH OF A LINE DRAWN PARALLEL TO THE NORTH LINE OF SAID SECTION THROUGH A POINT ON THE WEST LINE OF SAID SECTION 1,421.77 FEET SOUTH OF THE NORTHWEST CORNER OF SAID SECTION, EAST TO THE WEST LINE OF THE RIGHT OF WAY OF THE CHICAGO, MILWAUKEE AND ST. PAUL RAILROAD, IN COOK COUNTY, ILLINOIS; ALSO

### PARCEL 2:

THE EAST 665.50 FEET OF THE WEST 692.50 FEET OF LOT 1 IN STANLEY SUBDIVISION IN THE NORTHWEST  $\frac{1}{4}$  OF SECTION 15, TOWNSHIP 42 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED IN THE OFFICE OF THE REGISTRAR OF TITLES OF COOK COUNTY, ILLINOIS, ON FEBRUARY 15, 1956, AS DOCUMENT NO. 1650762, ALL IN COOK COUNTY, ILLINOIS.

Commonly known as: 1777 SHEPHERD ROAD, NORTHBROOK, ILLINOIS

Plat: 04-15-100-046, 04-15-102-075

Prepared By and After Recording  
Mail To:

Mr. Laurence G. Foy  
The Naperville Bank  
1112 South Washington  
Naperville, Illinois 60566-0399

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