

This document prepared by and
after recording returned to:
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55 East Monroe Street
Suite 3700
Chicago, IL 60603

UNOFFICIAL COPY 94721650



REAL PROPERTY MORTGAGE
(Wheeling, Illinois)

94721650

THIS REAL PROPERTY MORTGAGE ("Mortgage"), made as of July 7, 1994, is made and executed by Fluid Power Industries, Inc., a Delaware corporation, having its principal offices at 511 Glenn Avenue, Wheeling, Illinois 60690 ("Mortgagor"), in favor of LaSalle National Bank, a national banking association, having an office at 120 South LaSalle Street, Chicago, Illinois 60602 ("Lender").

DEPT-01 RECORDING 183.50
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88247 + CJ *-94-721650
COOK COUNTY RECORDER

RECITALS

I. Lender has agreed to make a loan to Mortgagor and extend other financial accommodations to Mortgagor in an aggregate principal amount of \$18,000,000.00 (collectively, the "Loan"). The Loan consists of (a) a revolving facility and the outstanding principal balance of such revolving facility may increase or decrease from time to time, but at no time shall the outstanding principal balance of such revolving facility exceed \$18,000,000.00, and (b) a non-revolving facility in the original principal amount of \$9,000,000.00. The Loan is evidenced by a certain Demand Note of even date herewith (the "Note"), made by Mortgagor. A copy of the Note is attached hereto as Exhibit A. The terms of the Loan are governed by a certain Loan and Security Agreement, dated as of July 7, 1994 (the "Loan Agreement"), by and between Mortgagor and Lender. The terms and provisions of the Note and the Loan Agreement are hereby incorporated by reference in this Mortgage.

II. In addition to a non-revolving credit facility, this Mortgage is given to secure a revolving credit facility and secures not only present indebtedness but also future advances, whether such future advances are obligatory or are to be made at the option of Lender, or otherwise as are to be made within twenty (20) years of the date hereof. The amount of indebtedness secured hereby may increase or decrease from time to time however the principal amount of such indebtedness shall not at one time exceed the amount of \$18,000,000.00 plus interest thereon, and other costs, amounts and disbursements as provided herein and in the other Loan Instruments (hereinafter defined).

GRANTING CLAUSES

To secure the payment of the indebtedness evidenced by the Note and the Loan Agreement and the payment of all amounts due under and the performance and observance of all covenants and conditions contained in this Mortgage, the Note, the Loan Agreement, any and all other mortgages, security agreements, assignments of leases and rents, guaranties, letters of credit and any other documents and instruments now or hereafter executed by Mortgagor or

C-99-02668

LAWYERS TITLE INSURANCE CORPORATION

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any party related thereto or affiliated therewith to evidence, secure or guarantee the payment of all or any portion of the indebtedness under the Note and any and all renewals, extensions, amendments and replacements of this Mortgage, the Note, the Loan Agreement and any such other documents and instruments (the Note, the Loan Agreement, this Mortgage, such other mortgages, security agreements, assignments of leases and rents, guaranties, letters of credit, and any other documents and instruments now or hereafter executed and delivered in connection with the Loan, and any and all amendments, renewals, extensions and replacements hereof and thereof, being sometimes referred to collectively as the "Loan Instruments" and individually as a "Loan Instrument") (all indebtedness and liabilities secured hereby being hereinafter sometimes referred to as "Borrower's Liabilities" which indebtedness and liabilities being secured hereby shall, in no event, exceed five times the aggregate face amount of the Note), Mortgagor does hereby convey, mortgage, warrant, assign, transfer, pledge and deliver to Lender the following described property subject to the terms and conditions herein:

(A) The land located in Cook County, Illinois, legally described in attached Exhibit B (the "Land");

(B) All the buildings, structures, improvements and fixtures of every kind or nature now or hereafter situated on the Land and all machinery, appliances, equipment, furniture and all other personal property of every kind or nature which constitute fixtures with respect to the Land together with all extensions, additions, improvements, substitutions and replacements of the foregoing ("Improvements");

(C) All easements, tenements, rights-of-way, vaults, gores of land, streets, ways, alleys, passages, sewer rights, water courses, water rights and powers and appurtenances in any way belonging, relating or appertaining to any of the Land or Improvements, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired ("Appurtenances");

(D) (i) All judgments, insurance proceeds, awards of damages and settlements which may result from any damage to all or any portion of the Land, Improvements or Appurtenances or any part thereof or to any rights appurtenant thereto;

(ii) All compensation, awards, damages, claims, rights of action and proceeds of or on account of (a) any damage or taking, pursuant to the power of eminent domain, of the Land, Improvements or Appurtenances or any part thereof, (b) damage to all or any portion of the Land, Improvements or Appurtenances by reason of the taking, pursuant to the power of eminent domain, of all or any portion of the Land, Improvements, Appurtenances or of other property, or (c) the alteration of the grade of any street or highway on or about the Land, Improvements, Appurtenances or any

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part thereof; and, except as otherwise provided herein, Lender is hereby authorized to collect and receive said awards and proceeds and to give proper receipts and acquittances therefor and, except as otherwise provided herein, to apply the same toward the payment of the indebtedness and other sums secured hereby; and

(iii) All proceeds, products, replacements, additions, substitutions, renewals and accessions of and to the Land, Improvements or Appurtenances;

(E) All rents, issues, profits, income and other benefits now or hereafter arising from or in respect of the Land, Improvements or Appurtenances (the "Rents"); it being intended that this Granting Clause shall constitute an absolute and present assignment of the Rents, subject, however, to the conditional permission given to Mortgagor to collect and use the Rents as provided in this Mortgage;

(F) Any and all leases, licenses and other occupancy agreements now or hereafter affecting the Land, Improvements or Appurtenances, together with all security therefor and guaranties thereof and all monies payable thereunder, and all books and records owned by Mortgagor which contain evidence of payments made under the leases and all security given therefor (collectively, the "Leases"), subject, however, to the conditional permission given in this Mortgage to Mortgagor to collect the Rents arising under the Leases as provided in this Mortgage;

(G) Any and all after-acquired right, title or interest of Mortgagor in and to any of the property described in the preceding Granting Clauses; and

(H) The proceeds from the sale, transfer, pledge or other disposition of any or all of the property described in the preceding Granting Clauses;

All of the mortgaged property described in the Granting Clauses, together with all real and personal, tangible and intangible property pledged in, or to which a security interest attaches pursuant to, any of the Loan Instruments is sometimes referred to collectively as the "Mortgaged Property." The Rents and Leases are pledged on a parity with the Land and Improvements and not secondarily.

ARTICLE ONE

COVENANTS OF MORTGAGOR

Mortgagor covenants and agrees with Lender as follows:

1.01 Performance under Note, the Loan Agreement, the Mortgage and Other Loan Instruments. Mortgagor shall perform,

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observe and comply with or cause to be performed, observed and complied with in a complete and timely manner all provisions hereof, of the Loan Agreement and of the Note, every other Loan Instrument and every instrument evidencing or securing Borrower's Liabilities and will promptly pay or cause to be paid to Lender when due the principal with interest thereon and all other sums required to be paid by Mortgagor pursuant to the Note, the Loan Agreement, this Mortgage, every other Loan Instrument and every other instrument evidencing or securing Borrower's Liabilities.

1.02 General Covenants and Representations. Mortgagor covenants, represents and warrants that as of the date hereof and at all times thereafter during the term hereof: (a) Mortgagor is seized of an indefeasible estate in fee simple in the Mortgaged Property and has good and absolute title to it free and clear of all liens, security interests, charges and encumbrances whatsoever except those expressly permitted in writing by Lender, if any (such liens, security interests, charges and encumbrances expressly permitted in writing being hereinafter referred to as the "Permitted Encumbrances"); (b) Mortgagor has good right, full power and lawful authority to mortgage and pledge the Mortgaged Property as provided herein; (c) upon the occurrence of an Event of Default (hereinafter defined), Lender may at all times peaceably and quietly enter upon, hold, occupy and enjoy the Mortgaged Property in accordance with the terms hereof; and (d) Mortgagor will maintain and preserve the lien of this Mortgage as a first and paramount lien on the Mortgaged Property subject only to the Permitted Encumbrances until Borrower's Liabilities have been paid in full.

1.03 Compliance with Laws and Other Restrictions. Mortgagor covenants and represents that the Land and the Improvements and the use thereof presently comply with, and will during the full term of this Mortgage continue to comply with, all applicable restrictive covenants, zoning and subdivision ordinances and building codes, licenses, health and environmental laws and regulations and all other applicable laws, ordinances, rules and regulations.

1.04 Taxes and Other Charges.

1.04.1 Taxes and Assessments. Mortgagor shall pay promptly when due all taxes, assessments, rates, dues, charges, fees, levies, fines, impositions, liabilities, obligations, liens and encumbrances of every kind and nature whatsoever now or hereafter imposed, levied or assessed upon or against the Mortgaged Property or any part thereof, or upon or against this Mortgage or Borrower's Liabilities or upon or against the interest of Lender in the Mortgaged Property, as well as all taxes, assessments and other governmental charges levied and imposed by the United States of America or any state, county, municipality or other taxing authority upon or in respect of the Mortgaged Property or any part thereof; provided, however, that Mortgagor may in good faith

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contest the validity, applicability or amount of any asserted tax, assessment or other charge in accordance with the provisions set forth in the Loan Agreement and pending such contest Mortgagor shall not be deemed in default hereunder if on or before the due date of the asserted tax or assessment, Mortgagor shall first obtain an endorsement, in form and substance satisfactory to Lender, to the loan policy of title insurance issued to Lender insuring the lien of this Mortgage, insuring over such tax or assessment.

1.04.2 Taxes Affecting Lender's Interest. If any state, federal, municipal or other governmental law, order, rule or regulation, which becomes effective subsequent to the date hereof, in any manner changes or modifies existing laws governing the taxation of mortgages or debts secured by mortgages, or the manner of collecting taxes, so as to impose on Lender a tax by reason of its ownership of any or all of the Loan Instruments or measured by the principal amount of the Note, requires or has the practical effect of requiring Lender to pay any portion of the real estate taxes levied in respect of the Mortgaged Property to pay any tax levied in whole or in part in substitution for real estate taxes or otherwise affects materially and adversely the rights of Lender in respect of the Note, this Mortgage or the other Loan Instruments, Borrower's Liabilities and all interest accrued thereon shall, upon thirty (30) days' notice, become due and payable forthwith at the option of Lender, whether or not there shall have occurred an Event of Default, provided, however, that, if Mortgagor may, without violating or causing a violation of such law, order, rule or regulation, pay such taxes or other sums as are necessary to eliminate such adverse effect upon the rights of Lender and does pay such taxes or other sums when due, Lender may not elect to declare due Borrower's Liabilities by reason of the provisions of this Section 1.04.2.

1.04.3 Tax Escrow. After the occurrence of an Event of Default, Mortgagor shall, in order to secure the performance and discharge of Mortgagor's obligations under this Section 1.04, but not in lieu of such obligations, deposit with Lender on the first day of each calendar month throughout the term of the Loan, deposits, in amounts set by Lender from time to time by written notice to Mortgagor, in order to accumulate funds sufficient to permit Lender to pay all annual ad valorem taxes, assessments and charges of the nature described in Section 1.04.1 at least thirty (30) days prior to the date or dates on which they shall become delinquent. The taxes, assessments and charges for purposes of this Section 1.04.3 shall, if Lender so elects, include, without limitation, water and sewer rents. Mortgagor shall procure and deliver to Lender when issued all statements or bills for such obligations. Upon demand by Lender, Mortgagor shall deliver to Lender such additional monies as are required to satisfy any deficiencies in the amounts necessary to enable Lender to pay such taxes, assessments and similar charges thirty (30) days prior to the date they become delinquent. Lender shall pay such taxes,

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assessments and other charges as they become due to the extent of the funds on deposit with Lender from time to time and provided Mortgagor has delivered to Lender the statements or bills therefor. In making any such payments, Lender shall be entitled to rely on any bill issued in respect of any such taxes, assessments or charges without inquiry into the validity, propriety or amount thereof and whether delivered to Lender by Mortgagor or otherwise obtained by Lender. Any deposits received pursuant to this Section 1.04.3 shall not be, nor be deemed to be, trust funds, but may be commingled with the general funds of Lender and Lender shall have no obligation to pay interest on amounts deposited with Lender pursuant to this Section 1.04.3. If any Event of Default occurs, any part or all of the amounts then on deposit or thereafter deposited with Lender under this Section 1.04.3 may at Lender's option be applied to payment of Borrower's Liabilities in such order as Lender may determine.

1.05 Mechanic's and Other Liens. Mortgagor shall not permit or suffer any mechanic's, laborer's, materialman's, statutory or other lien or encumbrance (other than any lien for taxes and assessments not yet due) to be created upon or against the Mortgaged Property, provided, however, that Mortgagor may in good faith, by appropriate proceeding, contest the validity, applicability or amount of any asserted lien in accordance with the provisions set forth in the Loan Agreement and, pending such contest, Mortgagor shall not be deemed to be in default hereunder if Mortgagor shall first obtain an endorsement, in form and substance satisfactory to Lender, to the loan policy of title insurance issued to Lender insuring the lien of this Mortgage, insuring over such lien.

1.06 Insurance and Condemnation.

1.06.1 Required Insurance. Mortgagor shall, at its sole expense, obtain for, deliver to, assign to and maintain for the benefit of Lender, until Borrower's Liabilities are paid in full, all policies of insurance required by the Loan Agreement. In the event of the foreclosure of this Mortgage or any other transfer of title to the Mortgaged Property in full or partial satisfaction of Borrower's Liabilities, all right, title and interest of Mortgagor in and to all insurance policies and renewals thereof then in force shall pass to the purchaser or grantee.

1.06.2 Adjustment of Loss. Lender is hereby authorized and empowered, at its option, to adjust or compromise any loss under any insurance policies covering the Mortgaged Property and to collect and receive the proceeds from any such policy or policies (and deposit such proceeds as provided in Section 1.06.4). Mortgagor hereby irrevocably appoints Lender as its attorney-in-fact for the purposes set forth in the preceding sentence. Each insurance company is hereby authorized and directed to make payment of 100% of all such losses directly to Lender alone. After deducting from such insurance proceeds any expenses incurred by

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Lender in the collection and settlement thereof, including without limitation attorneys' and adjusters' fees and charges, Lender shall apply the proceeds as provided in the Loan Agreement.

1.06.3 Condemnation Awards. Lender shall be entitled to all compensation, awards, damages, claims, rights of action and proceeds of, or on account of, (i) any damage or taking, pursuant to the power of eminent domain, of the Mortgaged Property or any part thereof, (ii) damage to the Mortgaged Property by reason of the taking, pursuant to the power of eminent domain, of other property, or (iii) the alteration of the grade of any street or highway on or about the Mortgaged Property. Lender is hereby authorized, at its option, to commence, appear in and prosecute in its own or Mortgagor's name any action or proceeding relating to any such compensation, awards, damages, claims, rights of action and proceeds and to settle or compromise any claim in connection therewith. Mortgagor hereby irrevocably appoints Lender as its attorney-in-fact for the purposes set forth in the preceding sentence. Lender after deducting from such compensation, awards, damages, claims, rights of action and proceeds all its expenses, including attorneys' fees, may apply such net proceeds (except as otherwise provided in Section 1.06.4 of this Mortgage) to payment of Borrower's Liabilities in such order and manner as Lender may elect. Mortgagor agrees to execute such further assignments of any compensation awards, damages, claims, rights of action and proceeds as Lender may require.

1.06.4 Repair; Proceeds of Casualty Insurance and Eminent Domain. If all or any part of the Mortgaged Property shall be damaged or destroyed by fire or other casualty or shall be damaged or taken through the exercise of the power of eminent domain or other cause described in Section 1.06.3, Mortgagor shall promptly and with all due diligence restore and repair the Mortgaged Property whether or not the proceeds, award or other compensation are sufficient to pay the cost of such restoration or repair. Except as permitted by the Loan Agreement, the entire amount of such proceeds, award or compensation shall be applied to Borrower's Liabilities in such order and manner as Lender may elect. If the proceeds of any insurance policies are to be made available to Mortgagor for restoration or repair of the Mortgaged Property in accordance with the provisions of the Loan Agreement, and the amount of proceeds to be made available to Mortgagor for restoration or repair of the Mortgaged Property is less than the cost of the restoration or repair as estimated by Lender at any time prior to completion thereof, Mortgagor shall cause to be deposited with Lender the amount of such deficiency within thirty (30) days of Lender's written request therefor (but in no event later than the commencement of the work) and Mortgagor's deposited funds shall be disbursed prior to any such insurance proceeds. If Mortgagor is required to deposit funds under this Section 1.06.4, the deposit of such funds shall be a condition precedent to Lender's obligation to disburse any insurance proceeds held by Lender hereunder. Without limitation of Lender's rights hereunder, it shall be an additional

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condition precedent to any disbursement of insurance proceeds held by Lender hereunder that Lender shall have approved all plans and specifications for any proposed repair or restoration. The amount of proceeds, award or compensation which is to be made available to Mortgagor, together with any deposits made by Mortgagor hereunder, shall be held by Lender to be disbursed from time to time to pay the cost of repair or restoration either, at Lender's option, to Mortgagor or directly to contractors, subcontractors, material suppliers and other persons entitled to payment in accordance with and subject to such conditions to disbursement as Lender may impose to assure that the work is fully completed in a good and workman-like manner and paid for and that no liens or claims arise by reason thereof. Lender may commingle any such funds held by it with its other general funds. Lender shall not be obligated to pay interest in respect of any such funds held by it nor shall Mortgagor be entitled to a credit against any of Borrower's Liabilities except and to the extent the funds are applied thereto pursuant to this Section 1.06.4. Notwithstanding any other provision of this Section 1.06.4, if an Event of Default shall be existing at the time of such casualty, taking or other event or if an Event of Default occurs thereafter, Lender shall have the right to immediately apply all insurance proceeds, awards or compensation to the payment of Borrower's Liabilities in such order and manner as Lender may determine. Lender shall have the right at all times to apply such net proceeds to the cure of any Event of Default or the performance of any obligations of Mortgagor under the Loan Instruments.

1.06.5 Insurance Escrow. Mortgagor shall, in order to secure the performance and discharge of Mortgagor's obligations under this Section 1.06, but not in lieu of such obligations, deposit with Lender on the first day of each calendar month throughout the term of the Loan, a sum in an amount determined by Lender from time to time by written notice to Mortgagor, in order to accumulate funds sufficient to permit Lender to pay all premiums payable in connection with the insurance required hereunder at least thirty (30) days prior to the date or dates on which they shall become due. Upon demand by Lender, Mortgagor shall deliver to Lender such additional monies as are required to satisfy any deficiencies in the amounts necessary to enable Lender to pay such premiums thirty (30) days prior to the date they shall become due.

1.07 Non-Impairment of Lender's Rights. Nothing contained in this Mortgage shall be deemed to limit or otherwise affect any right or remedy of Lender under any provision of this Mortgage or of any statute or rule of law to pay and, upon Mortgagor's failure to pay the same, Lender may pay any amount required to be paid by Mortgagor under Sections 1.04, 1.05 and 1.06. Mortgagor shall pay to Lender on demand the amount so paid by Lender together with interest at the rate payable under the Loan Agreement after an "Event of Default," as such term is defined in the Loan Agreement (the "Default Rate"), and the amount so paid by

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Lender together with interest, shall be added to Borrower's Liabilities.

1.08 Care of the Mortgaged Property. Mortgagor shall preserve and maintain the Mortgaged Property in good and first class condition and repair. Mortgagor shall not, without the prior written consent of Lender, permit, commit or suffer any waste, impairment or deterioration of the Mortgaged Property or of any part thereof, and will not take any action which will increase the risk of fire or other hazard to the Mortgaged Property or to any part thereof. Except as permitted by the Loan Agreement or as otherwise provided in this Mortgage, no new improvements shall be constructed on the Mortgaged Property and no part of the Mortgaged Property shall be removed, demolished or altered in any material manner without the prior written consent of Lender.

1.09 Transfer or Encumbrance of the Mortgaged Property. Except as permitted by the Loan Agreement, Mortgagor shall not permit or suffer to occur any sale, assignment, conveyance, transfer, mortgage, lease (other than leases made in accordance with the provisions of this Mortgage) or encumbrance of, or any contract for any of the foregoing on an installment basis or otherwise pertaining to, the Mortgaged Property, any part thereof, any interest therein, the beneficial interest in Mortgagor, any interest in the beneficial interest in Mortgagor or in any trust holding title to the Mortgaged Property, or any interest in a corporation, partnership or other entity which owns all or part of the Mortgaged Property or such beneficial interest, whether by operation of law or otherwise, without the prior written consent of Lender having been obtained.

1.10 Further Assurances. At any time and from time to time, upon Lender's request, Mortgagor shall make, execute and deliver, or cause to be made, executed and delivered, to Lender, and where appropriate shall cause to be recorded, registered or filed, and from time to time thereafter to be re-recorded, re-registered and refiled at such time and in such offices and places as shall be deemed desirable by Lender, any and all such further mortgages, security agreements, financing statements, instruments of further assurance, certificates and other documents as Lender may consider necessary or desirable in order to effectuate or perfect, or to continue and preserve the obligations under, this Mortgage and any instrument evidencing or securing Borrower's Liabilities, and the lien of this Mortgage as a lien upon all of the Mortgaged Property, whether now owned or hereafter acquired by Mortgagor, and unto all and every person or persons deriving any estate, right, title or interest under this Mortgage. Upon any failure by Mortgagor to do so, Lender may make, execute, record, register, file, re-record, re-register or re-file any and all such mortgages, instruments, certificates and documents for and in the name of Mortgagor, and Mortgagor hereby irrevocably appoints Lender the agent and attorney-in-fact of Mortgagor to do so.

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1.11 Assignment of Rents. The assignment of rents, income and other benefits contained in Section (E) of the Granting Clauses of this Mortgage shall be fully operative without any further action on the part of either party, and, specifically, Lender shall be entitled, at its option, upon the occurrence of an Event of Default hereunder, to all rents, income and other benefits from the Mortgaged Property, whether or not Lender takes possession of such property. Mortgagor hereby further grants to Lender the right effective upon the occurrence of an Event of Default to do any or all of the following, at Lender's option: (i) enter upon and take possession of the Mortgaged Property for the purpose of collecting the rents, income and other benefits; (ii) dispossess by the usual summary proceedings any tenant defaulting in the payment thereof to Lender; (iii) lease the Mortgaged Property or any part thereof; (iv) repair, restore and improve the Mortgaged Property; and (v) apply the rents, income and other benefits, after payment of certain expenses and capital expenditures relating to the Mortgaged Property, on account of Borrower's Liabilities in such order and manner as Lender may elect. Such assignment and grant shall continue in effect until Borrower's Liabilities are paid in full, the execution of this Mortgage constituting and evidencing the irrevocable consent of Mortgagor to the entry upon and taking possession of the Mortgaged Property by Lender pursuant to such grant, whether or not foreclosure proceedings have been instituted. Neither the exercise of any rights under this section by Lender nor the application of any such rents, income or other benefits to payment of Borrower's Liabilities shall cure or waive any Event of Default or notice provided for hereunder, or invalidate any act done pursuant hereto or pursuant to any such notice, but shall be cumulative of all other rights and remedies. Notwithstanding the foregoing, so long as no Event of Default has occurred or is continuing, Mortgagor shall have the right and authority to continue to collect the rents, income and other benefits from the Mortgaged Property as they become due and payable but not more than thirty (30) days prior to the due date thereof. The existence or exercise of such right of Mortgagor to collect said rents, income and other benefits shall not operate to subordinate this assignment to any subsequent assignment of said rents, income or other benefits, in whole or in part, by Mortgagor, and any such subsequent assignment by Mortgagor shall be subject to the rights of Lender hereunder. Mortgagor shall not permit any rent under any lease of the Mortgaged Property to be collected more than thirty (30) days in advance of the due date thereof and, upon any receiver, Lender, anyone claiming by, through or under Lender or any purchaser at a foreclosure sale coming into possession of the Mortgaged Property, no tenant shall be given credit for any rent paid more than thirty (30) days in advance of the due date thereof. Mortgagor shall act promptly to enforce all available remedies against any delinquent lessee so as to protect the interest of the lessor under the leases and to preserve the value of the Mortgaged Property.

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1.12 **After-Acquired Property.** To the extent permitted by, and subject to, applicable law, the lien of this Mortgage shall automatically attach, without further act, to all property hereafter acquired by Mortgagor located in or on, or attached to, or used or intended to be used in connection with, or with the operation of, the Mortgaged Property or any part thereof.

1.13 **Leases Affecting Mortgaged Property.** Mortgagor shall comply with and perform in a complete and timely manner all of its obligations as landlord under all leases affecting the Mortgaged Property or any part thereof. The assignment contained in Section (E) of the Granting Clauses shall not be deemed to impose upon Lender any of the obligations or duties of the landlord or Mortgagor provided in any lease, including, without limitation, any liability under the covenant of quiet enjoyment contained in any lease in the event that any tenant shall have been joined as a party defendant in any action to foreclose this Mortgage.

1.14 **Management of Mortgaged Property.** Mortgagor shall cause the Mortgaged Property to be managed at all times in accordance with sound business practice.

1.15 **Execution of Leases.** Mortgagor shall not permit any leases to be made of the Mortgaged Property or existing leases to be modified, terminated, extended or renewed without the prior written consent of Lender.

1.16 **Expenses.** Without limitation of any obligation of Mortgagor set forth in the Loan Agreement, Mortgagor shall pay when due and payable, and otherwise on demand made by Lender, all loan fees, appraisal fees, recording fees, taxes, brokerage fees and commissions, abstract fees, title insurance fees, escrow fees, reasonable attorneys' fees, court costs, documentary and expert evidence, fees of inspecting architects and engineers, and all other costs and expenses of every character which have been incurred or which may hereafter be incurred by Lender in connection with the Loan, including the preparation, execution, delivery and performance of this Mortgage. If Mortgagor fails to pay said costs and expenses as above provided, Lender may elect, but shall not be obligated, to pay the costs and expenses described in this Section 1.16, and if Lender does so elect, then Mortgagor will, upon demand by Lender, reimburse Lender for all such expenses which have been or shall be paid or incurred by it. The amounts paid by Lender shall bear interest at the Default Rate and such amounts, together with interest, shall be added to Borrower's Liabilities, shall be immediately due and payable and shall be secured by the lien of this Mortgage and the other Loan Instruments. In the event of foreclosure hereof, Lender shall be entitled to add to the indebtedness found to be due by the court a reasonable estimate of such expenses to be incurred after entry of the decree of foreclosure. To the extent permitted by law, Mortgagor agrees to hold harmless Lender against and from, and reimburse it for, all claims, demands, liabilities, losses, damages, judgments, penalties, costs

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and expenses, including without limitation attorneys' fees, which may be imposed upon, asserted against, or incurred or paid by it by reason of or in connection with any bodily injury or death or property damage occurring in or upon or in the vicinity of the Mortgaged Property through any cause whatsoever, or asserted against it on account of any act performed or omitted to be performed hereunder, or on account of any transaction arising out of or in any way connected with the Mortgaged Property, this Mortgage, the other Loan Instruments, any of the indebtedness evidenced by the Note or any of Borrower's Liabilities.

1.17 **Lender's Performance of Mortgagor's Obligations.** If Mortgagor fails to pay any tax, assessment, encumbrance or other imposition, or to furnish insurance hereunder, or to perform any other covenant, condition or term in this Mortgage, the Note, the Loan Agreement or any other Loan Instrument, Lender may, but shall not be obligated to, pay, obtain or perform the same. All payments made, whether such payments are regular or accelerated payments, and costs and expenses incurred or paid by Lender in connection therewith shall be due and payable immediately. The amounts so incurred or paid by Lender shall bear interest at the Default Rate and such amounts, together with interest, shall be added to Borrower's Liabilities and secured by the lien of this Mortgage and the other Loan Instruments. 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 covenant, condition or term that Mortgagor has failed to perform or observe, without thereby becoming liable to Mortgagor or any person in possession holding under Mortgagor. Performance or payment by Lender of any obligation of Mortgagor shall not relieve Mortgagor of such obligation or of the consequences of having failed to perform or pay the same and shall not effect the cure of any Event of Default.

1.18 **Payment of Superior Liens.** To the extent that Lender, after the date hereof, pays any sum due under any provision of law or instrument or document creating any lien superior or equal in priority in whole or in part to the lien of this Mortgage, such sum advanced by Lender shall be immediately due and payable, with interest at the Default Rate and shall be deemed to be a part of Borrower's Liabilities, and Lender shall have and be entitled to a lien on the premises equal in parity with that discharged, and Lender shall be subrogated to and receive and enjoy all rights and liens possessed, held or enjoyed by, the holder of such lien, which shall remain in existence and benefit Lender to secure the Note, the Loan Agreement and all obligations and liabilities secured hereby. Lender shall be subrogated, notwithstanding their release of record, to mortgages, trust deeds, superior titles, vendors' liens, mechanics' and materialmen's liens, charges, encumbrances, rights and equities on the Mortgaged Property to the extent that any obligation under any thereof is paid or discharged with proceeds of disbursements or advances under the Note or other indebtedness secured hereby.

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1.19 **Use of the Mortgaged Property.** Mortgagor shall not suffer or permit the Mortgaged Property, or any portion thereof, to be used by the public, as such, without restriction or in such manner as might tend to impair Mortgagor's title to the Mortgaged Property or any portion thereof, or in such manner as might make possible a claim or claims of easement by prescription or adverse possession by the public, as such, or of implied dedication of the Mortgaged Property or any portion thereof. Mortgagor shall not use or permit the use of the Mortgaged Property or any portion thereof for any unlawful purpose.

1.20 **Litigation Involving Mortgaged Property.** Mortgagor shall promptly notify Lender of any litigation, administrative procedure or proposed legislative action initiated against Mortgagor or the Mortgaged Property or in which the Mortgaged Property is directly or indirectly affected including any proceedings which seek to (i) enforce any lien against the Mortgaged Property, (ii) correct, change or prohibit any existing condition, feature or use of the Mortgaged Property, (iii) condemn or demolish the Mortgaged Property, (iv) take, by the power of eminent domain, any portion of the Mortgaged Property or any property which would damage the Mortgaged Property, (v) modify the zoning applicable to the Mortgaged Property, or (vi) otherwise adversely affect the Mortgaged Property. Mortgagor shall initiate or appear in any legal action or other appropriate proceedings when necessary to protect the Mortgaged Property from damage. Mortgagor shall, upon written request of Lender, represent and defend the interests of Lender in any proceedings described in this Section 1.20 or, at Lender's election, pay the fees and expenses of any counsel retained by Lender to represent the interest of Lender in any such proceedings, in which event such fees and expenses shall bear interest at the Default Rate and such fees and expenses, together with interest, shall be added to Borrower's Liabilities.

1.21 **Environmental Conditions.**

(a) Mortgagor covenants, warrants and represents that there are no, nor will there, for so long as any of Borrower's Liabilities remain outstanding, be, any Hazardous Materials (as hereinafter defined) generated, released, stored, buried or deposited over, beneath, in or upon the Mortgaged Property except as such Hazardous Materials may be required to be used, stored or transported in connection with the permitted uses of the Mortgaged Property and then only to the extent permitted by law after obtaining all necessary permits and licenses therefor. For purposes of this Mortgage, "Hazardous Materials" shall mean and include any pollutants, flammables, explosives, petroleum (including crude oil) or any fraction thereof, radioactive materials, hazardous wastes, toxic substances or related materials, including, without limitation, any substances defined as or included in the definition of toxic or hazardous substances, wastes, or materials under any federal, state or local laws, ordinances, regulations or guidances which regulate, govern, prohibit or pertain to the generation,

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manufacture, use, transportation, disposal, release, storage, treatment of, or response or exposure to, toxic or hazardous substances, wastes or materials. Such laws, ordinances and regulations are hereinafter collectively referred to as the "Hazardous Materials Laws."

(b) Mortgagor shall, and Mortgagor shall cause all employees, agents, contractors and subcontractors of Mortgagor and any other persons from time to time present on or occupying the Mortgaged Property to, keep and maintain the Mortgaged Property in compliance with, and not cause or knowingly permit the Mortgaged Property to be in violation of, any applicable Hazardous Materials Laws. Neither Mortgagor nor any employees, agents, contractors or subcontractors of Mortgagor or any other persons occupying or present on the Mortgaged Property shall use, generate, manufacture, store or dispose of on, under or about the Mortgaged Property or transport to or from the Mortgaged Property any Hazardous Materials, except as such Hazardous Materials may be required to be used, stored or transported in connection with the permitted uses of the Mortgaged Property and then only to the extent permitted by law after obtaining all necessary permits and licenses therefor.

(c) Mortgagor shall immediately advise Lender in writing of: (i) any notices received by Mortgagor (whether such notices are from the Environmental Protection Agency, or any other federal, state or local governmental agency or regional office thereof) of the violation or potential violation occurring on or about the Mortgaged Property of any applicable Hazardous Materials Laws; (ii) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened pursuant to any Hazardous Materials Laws; (iii) all claims made or threatened by any third party against Mortgagor or the Mortgaged Property relating to damage, contribution, cost recovery compensation, loss or injury resulting from any Hazardous Materials (the matters set forth in clauses (i), (ii) and (iii) above are hereinafter referred to as "Hazardous Materials Claims"); and (iv) Mortgagor's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Mortgaged Property that could cause the Mortgaged Property or any part thereof to be subject to any Hazardous Materials Claims. Lender shall have the right but not the obligation to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Hazardous Materials Claims and Mortgagor shall pay to Lender, upon demand, all attorneys' and consultants' fees incurred by Lender in connection therewith.

(d) Mortgagor shall be solely responsible for, and shall indemnify and hold harmless Lender, its directors, officers, employees, agents, successors and assigns from and against, any loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal or presence (whether prior to or during the term of the Loan or otherwise and

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regardless of by whom caused, whether by Mortgagor or any predecessor in title or any owner of land adjacent to the Mortgaged Property or any other third party, or any employee, agent, contractor or subcontractor of Mortgagor or any predecessor in title or any such adjacent land owner or any third person) of Hazardous Materials on, under or about the Mortgaged Property; including, without limitation: (i) claims of third parties (including governmental agencies) for damages, penalties, losses, costs, fees, expenses, damages, injunctive or other relief; (ii) response costs, clean-up costs, costs and expenses of removal and restoration, including fees of attorneys and experts, and costs of determining the existence of Hazardous Materials and reporting same to any governmental agency; and (iii) any and all expenses or obligations, including attorneys' fees, incurred at, before and after any trial or appeal therefrom whether or not taxable as costs, including, without limitation, attorneys' fees, witness fees, deposition costs, copying and telephone charges and other expenses.

(e) Mortgagor hereby represents, warrants and certifies that: (i) the execution and delivery of the Loan Instruments is not a transfer of "real property" under and as defined in the Illinois Responsible Property Transfer Act (765 ILCS 90/1 et seq.), as amended from time to time ("RPTA"); (ii) there are no underground storage tanks located on, under or about the Mortgaged Property which are subject to the notification requirements under Section 9002 of the Solid Waste Disposal Act, as now or hereafter amended (42 U.S.C. § 6991); and (iii) there is no facility located on or at the Mortgaged Property which is subject to the reporting requirements of Section 312 of the federal Emergency Planning and Community Right to Know Act of 1986 and the federal regulations promulgated thereunder (42 U.S.C. § 11022), as "facility" is defined in RPTA.

(f) Any loss, damage, cost, expense or liability incurred by Lender as a result of a breach or misrepresentation by Mortgagor or for which Mortgagor is responsible or for which Mortgagor has indemnified Lender shall be paid to Lender on demand, and, failing prompt reimbursement, such amounts shall, together with interest thereon at the Default Rate from the date incurred by Lender until paid by Mortgagor, be added to Borrower's Liabilities, be immediately due and payable and be secured by the lien of this Mortgage and the other Loan Instruments.

(g) Lender may, in its sole discretion, require Mortgagor, at its sole cost and expense, from time to time to perform or cause to be performed, such studies or assessments of the Mortgaged Property, as Lender may deem necessary or appropriate or desirable, to determine the status of environmental conditions on and about the Mortgaged Property, which such studies and assessments shall be for the benefit of, and be prepared in accordance with the specifications established by, Lender.

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(h) Mortgagor hereby grants to Lender, its agents, employees and contractors, access to the Mortgaged Property, from time to time upon prior written notice, for the purpose of either (i) taking such action as Lender shall determine to be appropriate to respond to a release, threatened release, or the presence of Hazardous Materials, or any related condition, on or about the Mortgaged Property; or (ii) conducting such studies or assessments of the Mortgaged Property, as Lender may deem necessary or appropriate or desirable.

ARTICLE TWO

DEFAULTS

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

(a) The failure by Mortgagor: (i) to pay or deposit when due any deposit for taxes and assessments due hereunder or any other sums to be paid by Mortgagor hereunder; or (ii) to keep, perform, or observe any covenant, condition or agreement contained in Sections 1.04.1, 1.06.1, 1.06.2, or 1.09 or 1.21 hereof; or (iii) to keep, perform or observe any other covenant, condition or agreement on the part of Mortgagor in this Mortgage.

(b) The occurrence of an "Event of Default" under and as defined in the Loan Agreement or any of the other Loan Instruments.

(c) The untruth of any warranty or representation made herein.

(d) An uninsured loss, damage, destruction or taking by eminent domain or other condemnation proceedings of any part of the Mortgaged Property.

ARTICLE THREE

REMEDIES

3.01 Acceleration of Maturity. If an Event of Default shall have occurred, Lender may declare the outstanding principal amount of the Note and the interest accrued thereon and any other of Borrower's Liabilities to be immediately due and payable, and upon such declaration such principal and interest and other Borrower's Liabilities declared due shall immediately become and be due and payable without further demand or notice. The foregoing shall not be in limitation of any provision contained in any other Loan Instrument, including without limitation any such provision

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pursuant to which Borrower's Liabilities become immediately due and payable without action or election by Lender.

3.02 Lender's Power of Enforcement. If an Event of Default shall have occurred, Lender may, either with or without entry or taking possession as provided in this Mortgage or otherwise, and without regard to whether or not Borrower's Liabilities shall have been accelerated, and without prejudice to the right of Lender thereafter to bring an action of foreclosure or any other action for any default existing at the time such earlier action was commenced or arising thereafter, proceed by any appropriate action or proceeding: (a) to enforce payment of the Note and/or any other of Borrower's Liabilities or the performance of any term hereof or any of the other Loan Instruments; (b) to foreclose this Mortgage and to have sold, as an entirety or in separate lots or parcels, the Mortgaged Property; and (c) to pursue any other remedy available to it. Lender may take action either by such proceedings or by the exercise of its powers with respect to entry or taking possession, or both, as Lender may determine. Without limitation of the foregoing, if an Event of Default shall have occurred, as an alternative to the right of foreclosure for the full indebtedness evidenced by the Note and the interest accrued thereon and any other Borrower's Liabilities, after acceleration thereof, Lender shall have the right to institute partial foreclosure proceedings with respect to the portion of Borrower's Liabilities so in default, as if under a full foreclosure, and without declaring all of Borrower's Liabilities to be immediately due and payable (such proceedings being referred to herein as "partial foreclosure"), and provided that, if Lender has not elected to accelerate all of Borrower's Liabilities and a foreclosure sale is made because of default in payment of only a part of Borrower's Liabilities, such sale may be made subject to the continuing lien of this Mortgage for the unmatured part of Borrower's Liabilities. Any sale pursuant to a partial foreclosure, if so made, shall not in any manner affect the unmatured portion of Borrower's Liabilities, but as to such unmatured portion, this Mortgage and the lien thereof shall remain in full force and effect just as though no foreclosure sale had been made. Notwithstanding the filing of any partial foreclosure or entry of a decree of sale therein, Lender may elect, at any time prior to a foreclosure sale pursuant to such decree, to discontinue such partial foreclosure and to accelerate Borrower's Liabilities by reason of any Event of Default upon which such partial foreclosure was predicated or by reason of any other defaults, and proceed with full foreclosure proceedings. Lender may proceed with one or more partial foreclosures without exhausting its right to proceed with a full or partial foreclosure sale for any unmatured portion of Borrower's Liabilities, it being the purpose to permit, from time to time a partial foreclosure sale for any matured portion of Borrower's Liabilities without exhausting the power to foreclose and to sell the Mortgaged Property pursuant to any partial foreclosure in respect of any other portion of Borrower's Liabilities, whether matured at the time or subsequently maturing, and

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without exhausting at any time the right of acceleration and the right to proceed with a full foreclosure.

3.03 Lender's Right to Enter and Take Possession, Operate and Apply Income.

(a) If an Event of Default shall have occurred, (i) Mortgagor, upon demand of Lender, shall forthwith surrender to Lender the actual possession of the Mortgaged Property, and to the extent permitted by law, Lender itself, or by such officers or agents as it may appoint, is hereby expressly authorized to enter and take possession of all or any portion of the Mortgaged Property and may exclude Mortgagor and its agents and employees wholly therefrom and shall have joint access with Mortgagor to the books, papers and accounts of Mortgagor; and (ii) notwithstanding the provisions of any lease or other agreement to the contrary, Mortgagor shall pay monthly in advance to Lender, on Lender's entry into possession, or to any receiver appointed to collect the rents, income and other benefits of the Mortgaged Property, the fair and reasonable rental value for the use and occupation of such part of the Mortgaged Property as may be in possession of Mortgagor, or any entity affiliated with or controlled by Mortgagor, and upon default in any such payment Mortgagor shall vacate and surrender possession of such part of the Mortgaged Property to Lender or to such receiver, and in default thereof Mortgagor may be evicted by summary proceedings or otherwise.

(b) If Mortgagor shall for any reason fail to surrender or deliver the Mortgaged Property or any part thereof after Lender's demand, Lender may obtain a judgment or decree conferring on Lender the right to immediate possession or requiring Mortgagor to deliver immediate possession of all or part of the Mortgaged Property to Lender, to the entry of which judgment or decree Mortgagor hereby specifically consents. Mortgagor shall pay to Lender, upon demand, all costs and expenses of obtaining such judgment or decree and reasonable compensation to Lender, its attorneys and agents, and all such costs, expenses and compensation shall, until paid, be secured by the lien of this Mortgage.

(c) Upon every such entering upon or taking of possession, Lender, to the extent permitted by law, may hold, store, use, operate, manage and control the Mortgaged Property and conduct the business thereof, and, from time to time:

(i) perform such construction, make all necessary and proper maintenance, repairs, renewals, replacements, additions and improvements thereto and thereon, and purchase or otherwise acquire additional fixtures and personal property;

(ii) insure or keep the Mortgaged Property insured;

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(iii) manage and operate the Mortgaged Property and exercise all the rights and powers of Mortgagor, on its behalf or otherwise, with respect to the same;

(iv) enter into agreements with others to exercise the powers herein granted Lender, all as Lender from time to time may determine; and Lender may collect and receive all the rents, income and other benefits of the Mortgaged Property, including those past due as well as those accruing thereafter; and shall apply the monies so received by Lender, in such order and manner as Lender may determine, to (1) the payment of interest, principal and other payments due and payable on the Note or pursuant to this Mortgage or to any other Borrower's Liabilities, (2) deposits for taxes and assessments, (3) the payment or creation of reserves for payment of insurance, taxes, assessments and other proper charges or liens or encumbrances upon the Mortgaged Property or any part thereof, and (4) the compensation, expenses and disbursements of the agents, attorneys and other representatives of Lender; and

(v) exercise such remedies as are available to Lender under the Loan Instruments or at law or in equity.

Lender shall surrender possession of the Mortgaged Property to Mortgagor only when all Borrower's Liabilities shall have been paid in full and all other defaults have been cured. However, the same right to possession shall exist if any subsequent Event of Default shall occur.

3.04 Leases. Lender is authorized to foreclose this Mortgage subject to the rights, if any, of any or all tenants of the Mortgaged Property, even if the rights of any such tenants are or would be subordinate to the lien of this Mortgage. Lender may elect to foreclose the rights of some subordinate tenants while foreclosing subject to the rights of other subordinate tenants. The failure to make any subordinate tenant a party defendant to any foreclosure proceedings and to foreclose its rights will not be, nor be asserted by Mortgagor, any junior lien holder, any tenant or any other party claiming by, through or under Mortgagor to be, a defense to any such foreclosure proceeding or any other proceedings instituted by Lender to collect the sums secured hereby or to collect any deficiency remaining unpaid after the foreclosure sale of the Mortgaged Property.

3.05 Purchase by Lender. Upon any foreclosure sale, Lender may bid for and purchase all or any portion of the Mortgaged Property and, upon compliance with the terms of the sale, may hold, retain and possess and dispose of such property in its own absolute right without further accountability.

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3.06 Application of Foreclosure Sale Proceeds. The proceeds of any foreclosure sale of the Mortgaged Property or any part thereof received by Lender shall be applied by Lender to the indebtedness secured hereby in such order and manner as Lender may elect in a written notice to Mortgagor given on or before sixty (60) days following confirmation of the sale and, in the absence of such election, first to the expenses of sale, then to expenses including attorneys' fees of the foreclosure proceeding, then to interest and then to principal.

3.07 Application of Indebtedness Toward Purchase Price. Upon any foreclosure sale, Lender may apply any or all of the indebtedness and other sums due to Lender under the Note, this Mortgage or any other Loan Instrument to the price paid by Lender at the foreclosure sale.

3.08 Waiver of Appraisement, Valuation, Stay, Extension and Redemption Laws. Mortgagor hereby waives any and all rights of redemption. Mortgagor further agrees, to the full extent permitted by law, that in case of an Event of Default, neither Mortgagor nor anyone claiming through or under it will set up, claim or seek to take advantage of any reinstatement, appraisement, valuation, stay or extension laws now or hereafter in force, or take any other action which would prevent or hinder the enforcement or foreclosure of this Mortgage or the absolute sale of the Mortgaged Property or the final and absolute putting into possession thereof, immediately after such sale, of the purchaser thereat. Mortgagor, for itself and all who may at any time claim through or under it, hereby waives, to the full extent that it may lawfully so do, the benefit of all such laws, and any and all right to have the assets comprising the Mortgaged Property marshalled upon any foreclosure of the lien hereof and agrees that Lender or any court having jurisdiction to foreclose such lien may sell the Mortgaged Property in part or as an entirety. Mortgagor acknowledges that the transaction of which this Mortgage is a part is a transaction which does not include either agricultural real estate (as defined in Section 15-1201 of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1101 et seq.) (herein called the "Act"); or residential real estate (as defined in Section 15-1219 of the Act), and to the full extent permitted by law, hereby voluntarily and knowingly waives its rights to reinstatement and redemption as allowed under Section 15-1601 of the Act.

3.09 Receiver - Lender in Possession. If an Event of Default shall have occurred, Lender, to the extent permitted by law and without regard to the value of the Mortgaged Property or the adequacy of the security for the indebtedness and other sums secured hereby, shall be entitled as a matter of right and without any additional showing or proof, at Lender's election, to either the appointment by the court of a receiver (without the necessity of Lender posting a bond) to enter upon and take possession of the Mortgaged Property and to collect all rents, income and other benefits thereof and apply the same as the court may direct or to

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be placed by the court into possession of the Mortgaged Property as mortgagee in possession with the same power herein granted to a receiver and with all other rights and privileges of a mortgagee in possession under law. The right to enter and take possession of and to manage and operate the Mortgaged Property, and to collect all rents, income and other benefits thereof, whether by a receiver or otherwise, shall be cumulative to any other right or remedy hereunder or afforded by law and may be exercised concurrently therewith or independently thereof. Lender shall be liable to account only for such rents, income and other benefits actually received by Lender, whether received pursuant to this Section 3.09 or Section 3.03. Notwithstanding the appointment of any receiver or other custodian, Lender shall be entitled as pledgee to the possession and control of any cash, deposits or instruments at the time held by, or payable or deliverable under the terms of this Mortgage to Lender.

3.10 Suits to Protect the Mortgaged Property. Lender shall have the power and authority (but not the duty) to institute and maintain any suits and proceedings as Lender may deem advisable (a) to prevent any impairment of the Mortgaged Property by any acts which may be unlawful or which violate the terms of this Mortgage, (b) to preserve or protect its interest in the Mortgaged Property, or (c) to restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, rule or order might impair the security hereunder or be prejudicial to Lender's interest.

3.11 Proofs of Claim. In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceedings affecting Mortgagor, 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 its claims allowed in such proceedings for the entire amounts due and payable under the Note, the Loan Agreement, this Mortgage and any other Loan Instrument, at the date of the institution of such proceedings, and for any additional amounts which may become due and payable after such date.

3.12 Mortgagor to Pay Borrower's Liabilities in Event of Default; Application of Monies by Lender.

(a) Upon occurrence of an Event of Default, Lender shall be entitled to sue for and to recover judgment against Mortgagor for Borrower's Liabilities due and unpaid together with costs and expenses, including, without limitation, the reasonable compensation, expenses and disbursements of Lender's agents, attorneys and other representatives, either before, after or during the pendency of any proceedings for the enforcement of this Mortgage; and the right of Lender to recover such judgment shall not be affected by any taking of possession or foreclosure sale hereunder, or by the

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exercise of any other right, power or remedy for the enforcement of the terms of this Mortgage, or the foreclosure of the lien hereof.

(b) In case of a foreclosure sale of all or any part of the Mortgaged Property and of the application of the proceeds of sale to the payment of Borrower's Liabilities, Lender shall be entitled to enforce all other rights and remedies under the Loan Instruments.

(c) Mortgagor hereby agrees, to the extent permitted by law, that no recovery of any judgment by Lender under any of the Loan Instruments, and no attachment or levy of execution upon any of the Mortgaged Property or any other property of Mortgagor, shall (except as otherwise provided by law) in any way affect the lien of this Mortgage upon the Mortgaged Property or any part thereof or any lien, rights, powers or remedies of Lender hereunder, but such lien, rights, powers and remedies shall continue unimpaired as before until Borrower's Liabilities are paid in full.

(d) Any monies collected or received by Lender under this Section 3.12 shall be applied to the payment of compensation, expenses and disbursements of the agents, attorneys and other representatives of Lender, and the balance remaining shall be applied to the payment of Borrower's Liabilities, in such order and manner as Lender may elect, and any surplus, after payment of all Borrower's Liabilities, shall be paid to Mortgagor.

3.13 Discontinuance of Proceedings; Position of Parties Restored. If Lender shall have proceeded to enforce any right or remedy under this Mortgage by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or such proceedings shall have resulted in a final determination adverse to Lender, then and in every such case Mortgagor and Lender shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of Lender shall continue as if no such proceedings had occurred or had been taken.

3.14 Remedies Cumulative. No right, power or remedy conferred upon or reserved to Lender by the Note, the Loan Agreement, this Mortgage or any other Loan Instrument or any instrument evidencing or securing Borrower's Liabilities is 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 under the Note or any other Loan Instrument or any instrument evidencing or securing Borrower's Liabilities, or now or hereafter existing at law, in equity or by statute.

3.15 Interest After Event of Default. If an Event of Default shall have occurred, all sums outstanding and unpaid under the Note and all other Borrower's Liabilities shall, to the extent permitted by law, bear interest thereafter at the Default Rate.

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ARTICLE FOUR

MISCELLANEOUS PROVISIONS

4.01 Heirs, Successors and Assigns Included in Parties. Whenever Mortgagor or Lender is named or referred to herein, heirs and successors and assigns of such person or entity shall be included, and all covenants and agreements contained in this Mortgage shall bind the successors and assigns of Mortgagor, including any subsequent owner of all or any part of the Mortgaged Property and inure to the benefit of the successors and assigns of Lender. This Section 4.01 shall not be construed to permit an assignment, transfer, conveyance, encumbrance or other disposition otherwise prohibited by this Mortgage.

4.02 Notices. All notices, requests, reports demands or other instruments required or contemplated to be given or furnished under this Mortgage to Mortgagor or Lender shall be directed to Mortgagor or Lender, as the case may be, in the manner set forth in the Loan Agreement at the following addresses:

If to Lender: LaSalle National Bank
120 South LaSalle Street
Chicago, Illinois 60603
Attention: Steven I. Fenton, Esq.

If to Mortgagor: Fluid Power Industries, Inc.
511 Glenn Avenue
Wheeling, Illinois 60090
Attention: John H. Long

4.03 Headings. The headings of the articles, sections, paragraphs and subdivisions of this Mortgage are for convenience only, are not to be considered a part hereof, and shall not limit, expand or otherwise affect any of the terms hereof.

4.04 Invalid Provisions. In the event that any of the covenants, agreements, terms or provisions contained in this Mortgage shall be invalid, illegal or unenforceable in any respect, the validity of the remaining covenants, agreements, terms or provisions contained herein (or the application of the covenant, agreement, term held to be invalid, illegal or unenforceable, to persons or circumstances other than those in respect of which it is invalid, illegal or unenforceable) shall be in no way affected, prejudiced or disturbed thereby.

4.05 Changes. Neither this Mortgage nor any term hereof may be released, changed, waived, discharged or terminated orally, or by any action or inaction, but only by an instrument in writing signed by the party against which enforcement of the release, change, waiver, discharge or termination is sought. To the extent permitted by law, any agreement hereafter made by Mortgagor and

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Lender relating to this Mortgage shall be superior to the rights of the holder of any intervening lien or encumbrance. Any holder of a lien or encumbrance junior to the lien of this Mortgage shall take its lien subject to the right of Lender to amend, modify or supplement this Mortgage, the Note, the Loan Agreement or any of the other Loan Instruments, to extend the maturity of Borrower's Liabilities or any portion thereof, to vary the rate of interest chargeable under the Note and/or the Loan Agreement and to increase the amount of the indebtedness secured hereby, in each and every case without obtaining the consent of the holder of such junior lien and without the lien of this Mortgage losing its priority over the rights of any such junior lien.

4.06 Governing Law. This Mortgage shall be construed, interpreted, enforced and governed by and in accordance with the laws of the State of Illinois.

4.07 Required Notices. Mortgagor shall notify Lender promptly of the occurrence of any of the following: (i) receipt of notice from any governmental authority relating to the violation of any rule, regulation, law or ordinance, the enforcement of which would materially and adversely affect the Mortgaged Property; (ii) material default by any tenant in the performance of its obligations under any lease of all or any portion of the Mortgaged Property or receipt of any notice from any such tenant claiming that a default by landlord in the performance of its obligations under any such lease has occurred; or (iii) commencement of any judicial or administrative proceedings by or against or otherwise adversely affecting Mortgagor or the Mortgaged Property.

4.08 Future Advances. This Mortgage is given to secure not only existing indebtedness, but also future advances (whether such advances are obligatory or are to be made at the option of Lender, or otherwise) made by Lender under the Note or the Loan Agreement, to the same extent as if such future advances were made on the date of the execution of this Mortgage. The total amount of indebtedness that may be so secured may decrease or increase from time to time, but all indebtedness secured hereby shall, in no event, exceed \$18,000,000.00.

4.09 Release. Upon full payment and satisfaction of Borrower's Liabilities, Lender shall issue to Mortgagor an appropriate release deed in recordable form.

4.10 Attorneys' Fees. Whenever reference is made herein to the payment or reimbursement of attorneys' fees, such fees shall be deemed to include compensation to staff counsel, if any, of Lender in addition to the fees of any other attorneys engaged by Lender.

4.11 Compliance with Illinois Mortgage Foreclosure Law. In the event that any provision in this Mortgage shall be inconsistent with any provision of the Illinois statutes regarding

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01/15/2015

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foreclosures of this Mortgage, the provisions of the Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Act. If any provision of this Mortgage shall grant to Lender any rights or remedies upon default of Mortgagor which are more limited than the rights that would otherwise be vested in Lender under the Act in the absence of said provision, Lender shall be vested with the rights granted in the Act to the full extent permitted by law. Without limiting the generality of the foregoing, all expenses incurred by Lender to the extent reimbursable under Sections 15-1510 and 15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether enumerated in this Mortgage, shall be added to the indebtedness secured by this Mortgage or by the judgment of foreclosure.

4.12 **Loan Agreement.** The Loan is governed by terms and provisions set forth in the Loan Agreement and in the event of any conflict between the terms of this Mortgage and the terms of the Loan Agreement, the terms of the Loan Agreement shall control, except that the terms set forth in Section 1.21 of this Mortgage shall control any conflicting terms set forth in the Loan Agreement.

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IN WITNESS WHEREOF, Mortgagor has caused this instrument to be executed by its duly authorized officers as of the day and year first above written.

ATTEST:

FLUID POWER INDUSTRIES, INC.,
a Delaware corporation

J. A. Lang
Its Secretary

By John J. [Signature]
Its VP

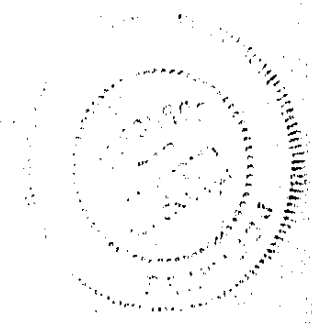
Property of Cook County Clerk's Office

THIS INSTRUMENT PREPARED BY
AND AFTER RECORDING RETURN TO:

Carole K. Towne, Esq.
Goldberg, Kohn, Bell, Black,
Rosenbloom & Moritz, Ltd.
55 East Monroe Street
Suite 3700
Chicago, Illinois 60603

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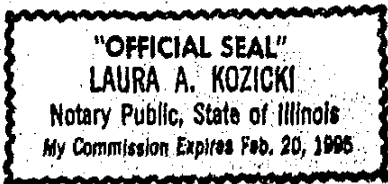
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ACKNOWLEDGMENT

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, LAURA A. KOZICKI, a Notary Public in and for and residing in said County and State, DO HEREBY CERTIFY THAT John J. Olson and John H. Long, Chief Financial Officer and Secretary of Fluid Power Industries, Inc., a Delaware corporation, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Chief Financial Officer and Secretary appeared before me this day in person and acknowledged that they signed and delivered said instrument as their own free and voluntary acts and as the free and voluntary act of said corporation; and the said Secretary acknowledged that he, as custodian of the corporate seal of said corporation, did affix said corporate seal to said instrument as his own free and voluntary act and as the free and voluntary act of said corporation for said uses and purposes.

GIVEN under my hand and notarial seal this 7th day of July, 1994.



Laura A. Kozicki
Notary Public

My Commission Expires:

February 20, 1995

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EXHIBIT A

Note

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DEMAND NOTE

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Executed as of the 17th day of July, 1994 at Chicago, Illinois. No. 1406840000

Amount \$ 18,000,000.00-----

FOR VALUE RECEIVED, the Undersigned (jointly and severally, if more than one) promises to pay to the order of LASALLE NATIONAL BANK (hereinafter, together with any holder hereof, called "Bank"), at the main office of the Bank, the principal sum of Eighteen Million and No/100----- Dollars (\$ 18,000,000.00-----) plus the aggregate unpaid principal amount of all advances made by Bank to the Undersigned (or any one of them, if more than one) pursuant to and in accordance with Paragraph 2 of the Loan Agreement (as hereinafter defined) in excess of such amount, or, if less, the aggregate unpaid principal amount of all advances made by Bank to the Undersigned (or any one of them, if more than one) pursuant to and in accordance with Paragraph 2 of the Loan Agreement. The Undersigned (jointly and severally, if more than one) further promises to pay interest on the outstanding principal amount hereof on the dates and at the rates provided in the Loan Agreement from the date hereof until payment in full hereof.

This Demand Note is referred to in and was delivered pursuant to that certain Loan and Security Agreement, as it may be amended from time to time, together with all exhibits thereto, dated July 7, 1994, between Bank and the Undersigned (the "Loan Agreement"). All terms which are capitalized and used herein (which are not otherwise defined herein) shall have the meaning ascribed to such term in the Loan Agreement.

THE OUTSTANDING PRINCIPAL BALANCE OF THE UNDERSIGNED'S LIABILITIES TO BANK UNDER THIS DEMAND NOTE SHALL BE PAYABLE UPON DEMAND. Prior to demand, principal hereunder shall be payable pursuant to the terms of the Loan Agreement.

The Undersigned (and each one of them, if more than one) hereby authorizes the Bank to charge any account of the Undersigned (and each one of them, if more than one) for all sums due hereunder. If payment hereunder becomes due and payable on a Saturday, Sunday or legal holiday under the laws of the United States or the State of Illinois, the due date thereof shall be extended to the next succeeding business day, and interest shall be payable thereon at the rate specified during such extension. Credit shall be given for payments made in the manner and at the times provided in the Loan Agreement. It is the intent of the parties that the rate of interest and other charges to the Undersigned under this Agreement shall be lawful; therefore, if for any reason the interest or other charges payable hereunder are found by a court of competent jurisdiction, in a final determination, to exceed the limit which Bank may lawfully charge the Undersigned, then the obligation to pay interest or other charges shall automatically be reduced to such limit and, if any amount in excess of such limit shall have been paid, then such amount shall be refunded to the Undersigned.

The principal and all accrued interest hereunder may be prepaid by the Undersigned, in part or in full, at any time; provided, however, that if Undersigned prepays all of the Liabilities prior to the end of the Original Term or any Renewal Term, the Undersigned shall pay a prepayment fee as provided in the Loan Agreement.

The Undersigned (and each one of them, if more than one) waives the benefit of any law that would otherwise restrict or limit Bank in the exercise of its right, which is hereby acknowledged, to set-off against the Liabilities, without notice and at any time hereafter, any indebtedness matured or unmatured owing from Bank to the Undersigned (or any one of them). The Undersigned (and each one of them, if more than one) waives every defense, counterclaim or setoff which the Undersigned (or any one of them) may now have or hereafter may have to any action by Bank in enforcing this Note and/or any of the other Liabilities, or in enforcing Bank's rights in the Collateral and ratifies and confirms whatever Bank may do pursuant to the terms hereof and of the Loan Agreement and with respect to the Collateral and agrees that Bank shall not be liable for any error in judgment or mistakes of fact or law.

The Undersigned, any other party liable with respect to the Liabilities and any and all endorsees and accommodation parties, and each one of them, if more than one, waive any and all presentment, demand, notice of dishonor, protest, and all other notices and demands in connection with the enforcement of Bank's rights hereunder.

The loan evidenced hereby has been made and this Note has been delivered at Chicago, Illinois. THIS NOTE SHALL BE GOVERNED AND CONTROLLED BY THE INTERNAL LAWS OF THE STATE OF ILLINOIS AS TO INTERPRETATION, ENFORCEMENT, VALIDITY, CONSTRUCTION, EFFECT AND IN ALL OTHER RESPECTS, INCLUDING WITHOUT LIMITATION, THE LEGALITY OF THE INTEREST RATE AND OTHER CHARGES, and shall be binding upon the Undersigned (and each one of them, if more than one) and the Undersigned's heirs, legal representatives, successors and assigns (and each of them, if more than one). If this Note contains any blanks when executed by the Undersigned (or any one of them, if more than one), the Bank is hereby authorized, without notice to the Undersigned (or any one of them, if more than one) to complete any such blanks according to the terms upon which the loan or loans were granted. Wherever possible, each provision of this Note shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Note shall be prohibited by or be invalid under such law, such provision shall be severable, and be ineffective to the extent of such prohibition or invalidity, without invalidating the remaining provisions of this Note. If more than one party shall execute this Note, the term "Undersigned" as used herein shall mean all parties signing this Note, and each one of them, and all such parties, their respective heirs, executors, administrators, successors and assigns, shall be jointly and severally obligated hereunder.

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To induce the Bank to make the loan evidenced by this Note, the undersigned (and each of them, if more than one) irrevocably agree that, subject to Bank's sole and absolute election, all actions arising directly or indirectly as a result or consequence of this Note or any other agreement with the Bank, or the Collateral, shall be instituted and litigated only in courts having situs in the City of Chicago, Illinois. The undersigned hereby consents to the exclusive jurisdiction and venue of any State or Federal Court located and having its situs in said city, and (ii) waives any objection based on forum non-conveniens. IN ADDITION, THE UNDERSIGNED (OR ANY ONE OF THEM, IF MORE THAN ONE) HEREBY WAIVES TRIAL BY JURY IN ANY ACTION OR PROCEEDING WHICH PERTAINS DIRECTLY OR INDIRECTLY TO THIS NOTE, THE LIABILITIES, THE COLLATERAL, ANY ALLEGED TORTIOUS CONDUCT BY THE UNDERSIGNED OR BANK OR WHICH IN ANY WAY, DIRECTLY OR INDIRECTLY, ARISES OUT OF OR RELATES TO THE RELATIONSHIP BETWEEN THE UNDERSIGNED AND BANK, waives personal service of any and all process, and consents that all such service of process may be made by certified mail, return receipt requested, directed to the Undersigned at the address indicated in the Bank's records; and service so made shall be complete five (5) days after the same has been deposited in the U.S. mails as aforesaid.

As used herein, all provisions shall include the masculine, feminine, neuter, singular and plural thereof, wherever the context and facts require such construction and in particular the word "Undersigned" shall be so construed.

IN WITNESS WHEREOF, each of the Undersigned, if more than one, has executed this Note on the date above set forth.

(INDIVIDUAL(S) SIGN BELOW)

(CORPORATION OR PARTNERSHIP SIGN BELOW)

Name _____

Address _____

Name _____

Address _____

Fluid Power Industries, Inc.
Name of Corporation or Partnership

By [Signature] CFO
Name and Title
511 Glenn Avenue
Wheeling, Illinois 60090
Address

By _____
Name and Title

Address _____

FOR BANK USE ONLY

Officer's Initials: _____

Approval: _____

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EXHIBIT B *JH*

Legal Description *JH*

PARCEL 1:

Lots 1, 2, and 3 in Block 5 in Amerline Subdivision of part of the East 1/2 of the Southwest 1/4 of Section 11, Township 42 North, Range 11, East of the Third Principal Meridian, in Cook County, Illinois.

PARCEL 2:

Lots 39 and 40 in Palwaukee Business Center Unit Two, being a Subdivision in the Southeast 1/4 of Section 11, Township 42 North, Range 11, East of the Third Principal Meridian, in Cook County, Illinois.

PARCEL 3:

Lots 67 and 68 in Palwaukee Business Center Unit Three, being a Subdivision in the Southeast 1/4 of Section 11, Township 42 North, Range 11, East of the Third Principal Meridian, according to Plat recorded September 11, 1986 as Document Number 86408080, in Cook County, Illinois.

511 Glenn Avenue
Wheeling, IL

03-11-303-026

03-11-410-001

03-11-410-002

03-11-410-013

03-11-410-014

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02/15/20