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Mortgage

THIS MORTGAGE is made on **December 15**, 1993 between **Chicago Title and Trust Company**, not personally, but by Trustee under a Trust Agreement dated **December 30**, 1969 and known as Trust No. **54617**, whose address is **171 No. Clark, Chicago, IL** and **NBD Bank**, a **state** **national state banking corporation** whose address is **One NBD Plaza, Lake Zurich, IL 60047** (the "Mortgagor") (Bank Name).
* To be deleted when this Mortgage is not executed by a Land Trust.

The Mortgagor MORTGAGES, CONVEYS AND WARRANTS to the Mortgagee real property and all the buildings, structures and improvements on it described as:
Land located in the **city** **Cook** State of **Arlington Heights**, Illinois.

SEE ATTACHED EXHIBIT "A"

DEBT-01 RECORDING \$129,56
140011 TRAN 9046 01/10/94 09:10:00
41077 4 8-194-1000712
COOK COUNTY RECORDER

(the "Premises")
Commonly known as **3733 Ventura Drive, Arlington Heights, IL 60004**
Tax Parcel Identification No. **03-06-304-018**.

The Premises shall also include all of the Mortgagor's right, title and interest in and to the following:

- (1) All easements, rights of way, leases, privileges, and hereditaments, and lying in the bed of any road or of any lake, opened, proposed or vacated, or any strip or piece, adjoining the Premises.
- (2) All machinery, apparatus, equipment, fixtures, fixtures, and articles of personal property of every kind and nature whatsoever located now or in the future in or upon the Premises and used or useable in connection with any present or future operation of the Premises, staff of which is called "Equipment". It is agreed that all Equipment is part of the Premises and appropriated to the use of the real estate and, whether attached or annexed or not, shall for the purposes of this Mortgage unless the Mortgagee shall otherwise elect, be deemed conclusively to be real estate and mortgaged and warrantied by the Mortgagor.
- (3) All mineral, oil, gas and water rights, royalties, water stock, if any.
- (4) All awards or payments including interest made as a result of the exercise of the right of eminent domain, the alteration of the grade of any street, any loss of or damage to any building or other improvement on the Premises, any other injury to or decrease in the value of the Premises, any refund due on account of the payment of real estate taxes, assessments or other charges levied against or imposed upon the Premises, and the reasonable attorneys' and paralegals' fees, costs and disbursements incurred by the Mortgagee in connection with the collection of any such award or payment.
- (5) All of the rents, issues and profits of the Premises, under present or future leases, or otherwise.

The Premises are unencumbered except as follows: a mortgage dated January 29, 1993 and recorded February 17, 1993 as document #93125420 at the Cook County Recorder of Deeds, made by Chicago Title and Trust Company U/T/A dated 12-30-69 and known as Trust No. 54617 to NBD Bank. As well as Exceptions 9 through 17 listed in Schedule B of Guaranty National Title Company's Commitment #92-1866 dated 12-30-92.

(Permitted Encumbrances) If the Premises are encumbered by Permitted Encumbrances, the Mortgagor shall perform all obligations and make all payments as required by the Permitted Encumbrances. The Mortgagor shall provide copies of all writing pertaining to Permitted Encumbrances, and the Mortgagee is authorized to request and receive that information from any other person without the consent or knowledge of the Mortgagor.

This Mortgage secures the indebtedness or obligation evidenced by

- (i) The note(s) dated **December 15, 1993** in the principal amount of **\$160,000.00** respectively, maturing on **December 1, 1998** executed and delivered by **Ventura Partnership and *** to the Mortgagee with interest at the per annum rate of **one-half** percent (**1/2 %**) above the rate announced as the Mortgagee's Prime Rate on the principal balance remaining from time to time unpaid. Interest after default or maturity of the note, whether by acceleration or otherwise, on the principal balance of the note remaining from time to time unpaid shall be at the per annum rate of **three and one-half** percent (**3.5 %**) above said Prime Rate and
- (ii) the guaranty of the debt of the Mortgagor dated **9/10/93** to the Mortgagee, and

including any extensions, renewals, modifications or replacements without limit as to the number or frequency (the "Debt").
*** Chicago Title and Trust U/T/A dated 12-30-69 A/K/A Trust #54617** **29. 5%**

LIMITATION ON AMOUNT SECURED BY MORTGAGE. Notwithstanding anything to the contrary contained in this Mortgage, the amount secured by this Mortgage shall not exceed the principal sum of **\$250,000.00** at any one time outstanding.

FUTURE ADVANCES AND CROSS LIEN: The Debt shall also include all other present and future, direct and indirect, obligations and liabilities of the Mortgagor, or any one or more of them, with or without others, to the Mortgagee. This shall not apply to any obligation or debt incurred for personal, family or household purposes unless the note or guaranty expressly states that it is secured by this Mortgage.

This Mortgage shall not create the performance of the promises and agreements contained in this Mortgage.

The Mortgagee promises and agrees as follows:

1 - PAYMENT OF DEBT; PERFORMANCE OF OBLIGATIONS. The Mortgagor shall promptly pay when due, whether by acceleration or otherwise, the Debt for which the Mortgagor is liable, and shall promptly perform all obligations to which the Mortgagee has agreed under the terms of this Mortgage and any loan documents evidencing the Debt.

2 - TAXES. The Mortgagor shall pay, when due, and before any interest collection fee, or penalties shall accrue, all taxes, assessments, fines, impositions, and other charges which may become a lien prior to this Mortgage. Should the Mortgagor fail to make such payments, the Mortgagee may, at its option and at the expense of the Mortgagor, pay the amount due for the account of

the Mortgagor. Upon the receipt of the Mortgagor, the Mortgagor shall immediately furnish to the Mortgagee all notices of amounts due and receipts evidencing payment. The Mortgagor shall promptly notify the Mortgagee of any lien on all or any part of the Premises and shall promptly discharge any unpermitted lien or encumbrance.

3 - CHANGE IN TAXES. In the event of the passage of any law or regulation, state, federal or municipal, subsequent to the date of this Mortgage, in any manner changing or modifying the laws, regulations, or governing the taxation of monies or debts secured by mortgages, or the manner of collecting such taxes, the entire principal secured by this Mortgage and all interest accrued shall become due and payable immediately at the option of the Mortgagee.

4 - INSURANCE. Until the Debt is fully paid, the Mortgagor shall keep the Premises and the present and future buildings and other improvements on the Premises constantly insured for the benefit of the Mortgagee against fire and such other hazards and risks customarily covered by the standard form of extended coverage endorsement available in the State of Illinois, including a form of vandalism and malicious mischief, and shall further provide flood insurance if the Premises are situated in an area designated as a flood risk area by the Director of the Federal Emergency Management Agency or as otherwise required by the Flood Disaster Protection Act of 1973 and regulations issued under it.

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the presence, disposal, release or threatening release of any Hazardous Materials on or over, under, from or affecting the Premises or the Gold Mine, separation buildings, personal property, persons or animals, obtain personal injury, financial, wrongful death or property damage, fire or personal arising out of or related to such Hazardous Materials on the Premises, or any lawsuit brought or threatened, and even reached or government order relating to such Hazardous Materials with respect to the Premises, and/or (d) any violation of laws, orders, regulations, requirement, or demands of government authorities, or any policy, or requirements of the Mortgagor, which are based upon or in any way related to such Hazardous Materials used on the Premises. The indemnity obligations under this paragraph are specifically limited as follows:

(i) The Mortgagor shall have no indemnity obligation with respect to Hazardous Materials that are first introduced to the Premises or any part of the Premises subsequent to the date that the Mortgagor's interest in and possession of that part of the Premises to which such Hazardous Materials have been so introduced shall have fully terminated by foreclosure of this Mortgage or acceptance of a deed in lieu of foreclosure;

(ii) The Mortgagor shall have no indemnity obligation with respect to any Hazardous Materials introduced to the Premises or any part of the Premises by the Mortgagor, its successors or assigns.

The Mortgagor agrees that in the event this Mortgage is foreclosed or the Mortgagor tends a deed in lieu of foreclosure, the Mortgagor shall deliver the Premises to the Mortgagor free of any and all Hazardous Materials, which are then reported to be removed (whether over time or immediately) pursuant to applicable federal, state and local laws, ordinances, rules, or regulations affecting the Premises.

For purposes of this Mortgage, "Hazardous Material" means any materials or substance: (i) which is or becomes defined as a "hazardous substance," "pollutant" or "contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) Section 9601 et seq and amendments thereto and regulations promulgated thereunder; (ii) containing gasoline, oil, diesel fuel or other petroleum products; (iii) which is or becomes defined as a "hazardous waste" pursuant to the Federal Resource Conservation and Recovery Act (RCRA) Section 6901 et seq and amendments thereto and regulations promulgated thereunder; (iv) containing polychlorinated biphenyls (PCBs); (v) containing asbestos; (vi) which is radioactive; (vii) which is biologically hazardous or (viii) the presence of which requires investigation or remediation under any federal, state or local statute, regulation, ordinance or policy; or (ix) which is or becomes defined as a "hazardous waste," "hazardous substance," "pollutant" or "contaminant" under any federal, state or local statute, regulation or ordinance, or (x) any explosive, corrosive or otherwise hazardous substance, material or waste which is or becomes regulated by any federal, state or local governmental authority; or (xi) which causes a nuisance upon or waste to the Premises.

"Governmental Regulation(s)" means any law, regulation, rule, policy, or statute or similar requirement of the United States, any state, any county, city, or other agency or subdivision of the United States, or any state.

The provisions of this section shall be in addition to any and all other obligations and liabilities the Mortgagor may have to the Mortgagor under the Debt, any loan document, and in common law, and shall survive the repayment of all sums due for the Debt, (b) the satisfaction of all of the other obligations of the Mortgagor in this Mortgage and under any loan document, (c) the discharge of this Mortgage, and (d) the foreclosure of this Mortgage or acceptance of a deed in lieu of foreclosure. Notwithstanding anything to the contrary contained in this Mortgage, it is the intention of the Mortgagor and the Mortgagor that the indemnity provisions of this section shall only apply to an action commenced against any owner or operator of the Premises in which any interest of the Mortgagor is threatened or any claim is made against the Mortgagor for the payment of money.

17. EVENTS OF DEFAULT/ACCELERATION: Upon the occurrence of any of the following, the Mortgagor shall be entitled to exercise its remedies under this Mortgage or as otherwise provided by law: (1) The Mortgagor or, if other than the Mortgagor, any principal obligor of the Debt ("Principal Obligor") fails to pay when due any amount payable under the notes, the guaranty, or any other agreement evidencing the Debt; (2) the Mortgagor or Principal Obligor fails to observe or perform any other term of the notes, the guaranty, or any other agreement evidencing the Debt or (b) makes any materially incorrect or misleading representation in any financial statement or other information delivered to the Mortgagor; (3) the Mortgagor or Principal Obligor defaults under the terms of this Mortgage, any loan agreement, mortgage, security agreement, or other document executed as part of the Debt transaction or any guaranty of the Debt becomes unenforceable in whole or in part, or any guarantor fails to promptly perform under such a guaranty; (4) the Mortgagor fails to pay when due any amount payable under any note or agreement evidencing debt to the Mortgagor or defaults under the terms of any agreement or instrument relating to or securing any debt for borrowed money, owing to the Mortgagor; (5) a "reportable event" (as defined in the Employee Retirement Income Security Act of 1974, as amended) occurs that would permit the Pension Benefit Guaranty Corporation to terminate any employee benefit plan of the Mortgagor or Principal Obligor or any affiliate of the Mortgagor or Principal Obligor; (6) the Mortgagor or Principal Obligor becomes insolvent or unable to pay its debts as they become due; (7) the Mortgagor or Principal Obligor (a) makes an assignment for the benefit of creditors, or (b) consents to the appointment of a custodian, receiver or trustee for itself or for a substantial part of its assets, or (c) commences any proceeding under any bankruptcy, reorganization, liquidation, insolvency or similar laws of any jurisdiction; (8) a custodian, receiver or trustee is appointed for the Mortgagor or Principal Obligor or for a substantial part of its assets without the consent of the party against which the appointment is made and is not removed within 60 days after such appointment; (9) proceedings are commenced against the Mortgagor or Principal Obligor under any bankruptcy, reorganization, liquidation or similar laws of any jurisdiction, and such proceedings remain undismissed for 60 days after commencement; or the Mortgagor or Principal Obligor consents to the commencement of such proceedings; (10) any judgment is entered against the Mortgagor or Principal Obligor or an attachment, levy, or garnishment is issued against any property of the Mortgagor or Principal Obligor; (11) any proceedings are instituted for the forced sale or collection of a Mortgagor's judgment or debt affecting the Premises; (12) the Mortgagor sells, transfers or hypothecates any part of the Premises except as provided in this Mortgage without the prior written consent of the Mortgagor; (13) the Mortgagor or Principal Obligor dies; (14) The Mortgagor or Principal Obligor, without the Mortgagor's written consent, merges or consolidates with any third party; (e) the Mortgagor partakes in a joint or business outside the ordinary course of its business; or (f) agrees to do any of the foregoing; (15) there is a substantial change in the existing or prospective

financial condition or any other factor which the Mortgagor deems to be in good faith determinative and materially adverse.

18. REMEDIES UPON DEFAULT: Upon the occurrence of any of the events of default set forth in this Mortgage, at the sole option of Mortgagor, the note and/or any other liabilities shall become immediately due and payable and Mortgagor shall pay all expenses of Mortgagor including attorneys' and paralegals' fees and all expenses incurred in connection with the enforcement of this Mortgage and all expenses incurred in the enforcement of Mortgagor's right in the Premises and other costs incurred in connection with the disposition of the Premises. When the indebtedness secured hereby shall become due, whether by acceleration or otherwise, Mortgagor shall have the right to foreclose the lien of this Mortgage. In any suit to foreclose the lien of this Mortgage, there shall be allowed and included as additional indebtedness in the judgment of foreclosing all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagor for attorneys' and paralegals' fees, appraiser fees, outlays for documentary and expert evidence, stenographer charges, publication costs and costs of procuring all abstracts of title, title searches and examinations, title insurance policies, attorney certificates, tax and lien searches, and similar data and assurances with respect to title as Mortgagor may deem to be reasonably necessary either to prosecute the foreclosure suit or to evidence to bidders at any foreclosure sale. All of the foregoing items, which may be expended after entry of the foreclosure judgment, may be estimated by Mortgagor. All expenditures and expenses mentioned in this paragraph when incurred or paid by Mortgagor shall become additional indebtedness secured hereby and shall be immediately due and payable with interest thereon at the highest rate permitted under law, of the instrument evidencing the Debt. This paragraph shall also apply to any expenditures or expenses incurred or paid by Mortgagor or on behalf of Mortgagor in connection with (a) any proceeding, including without limitation, probate and bankruptcy proceedings to which Mortgagor shall be a party, either as plaintiff, claimant or defendant, by reason of this Mortgage or any indebtedness secured hereby, or (b) any preparation for the commencement of any suit for the foreclosure of the Mortgage after actual or 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. 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 above mentioned; 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 supplies to Mortgagor or Mortgagor's heirs, legal representatives, successors or assigns, as their rights may appear. Upon, or at any time after the filing of a complaint to foreclose this Mortgage, the court in which such suit is filed may grant the Mortgagor the right to possess the Premises pursuant to Chapter 110, Sections 15-1701 through 15-1703 of the Illinois Revised Statutes and/or appoint a receiver of the Premises. Such grant and/or appointment may be made either before or after entry of judgment of foreclosure, without notice, without regard to the solvency or insolvency of Mortgagor at the time of application for the grant and/or without regard to the then value of the Premises or whether the Premises shall be then occupied as a home stead or not. Mortgagor may be appointed as the receiver. The Mortgagor in possession and/or receiver shall have all powers conferred by law, including but not limited to the 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 time in which Mortgagor, except for the intervention of Mortgagor in possession or receiver, would be entitled to collect the rents, issues and profits. The Mortgagor in possession or receiver shall also have all other powers which may be necessary or are usual in 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 Mortgagor in possession or receiver to apply the net income in its hands in payment in whole or in part of the indebtedness secured hereby, or secured by any judgment for the foreclosure of this Mortgage, or any tax, special assessment or other lien or encumbrance which may be or will become superior to the lien hereof or of the judgment, and the deficiency judgment against Mortgagor or any guarantor of the note in case of a forfeiture, safe and deficiency. 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 party interposing the same in an action at law upon the note.

19. REPRESENTATIONS: If the Mortgagor is a corporation, it represents that it is a corporation duly organized, existing and in good standing under the law of its state of incorporation, that it is valid, qualified and in good standing under the laws of Illinois, and that the execution and delivery of this Mortgage and the performance of the obligations it imposes are within its corporate powers, have been duly authorized by all necessary action of its board of directors, and do not contravene the terms of its articles of incorporation or by laws. If the Mortgagor is a general or limited partnership, it represents that it is duly organized and existing and that the execution and delivery of this Mortgage and the performance of the obligations it imposes do not conflict with any provision of its partnership agreement and have been duly authorized by all necessary action of its partners. Each Mortgagor represents that the execution and delivery of the Mortgage and the performance of the obligations it imposes do not violate any law and do not conflict with any agreement by which it is bound, and that no consent or approval of any governmental authority or any third party is required for the execution or delivery of this Mortgage or the performance of the obligations it imposes and that this Mortgage is a valid and binding agreement, enforceable in accordance with its terms. Each Mortgagor further represents that it shall provide all balance sheets, profit and loss statements and other financial statements as requested by Mortgagor. Any such statements that are furnished to the Mortgagor are accurate and fairly reflect the financial condition of the organizations and persons to which they apply on their effective dates, including contingent liabilities of every type, such financial condition has not changed materially and adversely since those dates.

20. NOTICES: Notice from one party to another relating to this Mortgage shall be deemed effective if made in writing, including telecommunications and delivered to the recipient at his/her place of business or telecopier number set forth above in one of the following means: (a) by facsimile transmission, (b) by registered or certified mail, pre-paid, with return receipt requested, (c) by express mail, post air mail, (d) Federal Express, Paratrade Courier or like overnight courier service or tele-

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Given under my hand and sealed with this 15th day of December, 1969

of said corporation, as witness, for the uses and purposes herein set forth

and also this day declare before the said instrument as this our true and voluntary act of said corporation, that the said corporation, its officers, agents, employees and servants do make, constitute and publish this instrument as their true and voluntary act of said corporation, to have full force and effect as if it had been made and executed before me this day in person and for whom I declare that they signed and delivered this said instrument as their own free and voluntary acts, and as the free and voluntary act of said corporation.

in witness whereof, the undersigned persons whose names are subscribed to the foregoing instrument as

of said corporation, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as

such,
RICHARD J. KELLY, President and Secretary
and Attala

County of Cook

State of Illinois

My Commission Expires
JANUARY 1972

Given under my hand and sealed with this 16th day of December, 1969

SS: C

State of Illinois

My Commission Expires
JANUARY 1972

Given under my hand and sealed with this 16th day of December, 1969

and voluntary act, for the uses and purposes herein set forth

Instrument known to me to be the same persons whose names are subscribed to the foregoing

personality appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his/her free

and voluntary act for the uses and purposes herein set forth

SS: C

County of Cook

State of Illinois

Nine NBD Plaza, IL 60047
Kevin Christopher

return to:

This document prepared by and after recording

Witnessed the hand and seal of Kevin Christopher this 30th day of December, 1969

December 30, 1969, and known as file No. 54617

No personally, but as trustee under a Trust Agreement dated

Chicago Title and Trust Company

17. **WITNESSES TO THE TRUST AGREEMENT** THE WITNESSES AND THE MORTGAGEE AND THE TRUSTEE AGREE THAT THE TRUST AGREEMENT IS MADE AND CONSTITUTED IN THE CITY OF CHICAGO, STATE OF ILLINOIS, AND NOT IN THE STATE OF NEW YORK, AND THAT THE TRUST AGREEMENT SHALL BE CONSTRUED ACCORDING TO THE LAW OF THE STATE OF ILLINOIS, AND NOT ACCORDING TO THE LAW OF THE STATE OF NEW YORK.

18. **WITNESSES TO THE TRUST AGREEMENT** THE WITNESSES AND THE MORTGAGEE AND THE TRUSTEE AGREE THAT THE TRUST AGREEMENT IS MADE AND CONSTRUED IN THE STATE OF NEW YORK, AND THAT THE TRUST AGREEMENT SHALL BE CONSTRUED ACCORDING TO THE LAW OF THE STATE OF NEW YORK, AND NOT ACCORDING TO THE LAW OF THE STATE OF ILLINOIS.

19. **TERMINATION OF THE TRUST** VARIOUS PROVISIONS ARE PROVIDED FOR THE TERMINATION OF THE TRUST, INCLUDING BUT NOT LIMITED TO THE FOLLO-

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EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY SECURING A \$160,000 LOAN FROM NBD BANK
TO VENTURA PARTNERSHIP AND CHICAGO TITLE AND TRUST; NOT PERSONALLY,
UNDER TRUST NO. 54617 DATED DECEMBER 30, 1969

ALL OF LOTS 9 AND 10 AND THAT PART OF LOT 11 DESCRIBED AS FOLLOWS:
BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 11; THENCE SOUTH 0
DEGREES 14 MINUTES 14 SECONDS WEST, A DISTANCE OF 33.72 FEET TO A POINT;
THENCE NORTH 89 DEGREES 45 MINUTES 46 SECONDS WEST, A DISTANCE OF
224.26 FEET TO A POINT; THENCE NORTH 43 DEGREES 49 MINUTES 24 SECONDS
WEST, A DISTANCE OF 127.77 FEET TO A POINT OF INTERSECTION WITH THE
SOUTHEASTERLY RIGHT-OF-WAY LINE OF VENTURA DRIVE; THENCE
NORTHEASTERLY 83.31 FEET ALONG THE ARC OF A CIRCLE CONVEX TO THE
SOUTHEAST, AND HAVING A RADIUS OF 282.00 FEET TO THE NORTHWEST
CORNER OF SAID LOT 11; THENCE SOUTH 64 DEGREES 14 MINUTES 19 SECONDS
EAST, A DISTANCE OF 296.62 FEET TO THE HEREINAFORE DESIGNATED POINT OF
BEGINNING, ALL IN 53 PARK OF COMMERCE, BEING A SUBDIVISION OF PARTS OF
GOVERNMENT LOTS 1 AND 2 IN THE WEST 1/2 OF SECTION 6, TOWNSHIP 42
NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY,
ILLINOIS.

COMMONLY KNOWN AS: 3733 VENTURA DRIVE, ARLINGTON HEIGHTS, IL 60004

PERMANENT INDEX NUMBER: 03-06-304-018

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