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**MORTGAGE,
SECURITY AGREEMENT
AND FINANCING
STATEMENT**

. DEPT-01 RECORDING \$91.00
. T#0012 TRAN 8359 12/27/95 08:28:00
. #7121 # JM *-95-896723
. COOK COUNTY RECORDER

7584900 DI (M.R.) 294

BORROWER: First Bank and Trust Company of Illinois, not personally but as Trustee under Trust Agreement dated December 8, 1995 and known as Trust Number 10-1991.

LENDER: First Bank and Trust Company of Illinois, an Illinois banking corporation.

THIS INSTRUMENT IS EFFECTIVE AND SHALL REMAIN EFFECTIVE AS A FINANCING STATEMENT FILED AS A FIXTURE FILING WITH RESPECT TO ALL GOODS WHICH ARE OR ARE TO BECOME FIXTURES ON THE REAL ESTATE HEREIN DESCRIBED AND IS TO BE FILED FOR RECORD OR REGISTERED IN THE REAL ESTATE RECORDS OF COOK COUNTY, ILLINOIS. THE MAILING ADDRESS OF LENDER AND THE ADDRESS OF BORROWER ARE SET FORTH WITHIN. A PHOTOGRAPHIC OR OTHER REPRODUCTION OF THIS INSTRUMENT OR ANY FINANCING STATEMENT RELATING TO THIS INSTRUMENT SHALL BE SUFFICIENT AS A FINANCING STATEMENT.

Street Address of Property:
3703 W. Lake Avenue
Glenview, Illinois 60025

This instrument prepared by
(and return after recording to):

Robert W. Glantz, Esquire
ROSS & HARDIES
150 North Michigan Avenue
Suite 2500
Chicago, Illinois 60601-7567
(312) 558-1000

Property Tax Index Number:

04-28-300-028-0000

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BOX 333-CTI

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MORTGAGE, SECURITY AGREEMENT FINANCING STATEMENT

THIS MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT, made as of the 21st day of December by and among **FIRST BANK AND TRUST COMPANY OF ILLINOIS**, not personally but as Trustee under Trust Agreement dated December 8, 1995 and known as Trust Number 10-1991 ("Borrower"); **3703 W. LAKE L.L.C.**, an Illinois liability company ("Beneficiary"), and **FIRST BANK AND TRUST COMPANY OF ILLINOIS**, an Illinois banking corporation having its principal office and place of business at 300 East Northwest Highway, Palatine, Illinois 60067 ("Lender"),

WITNESSETH:

A. Borrower, Beneficiary, and certain individuals have executed and delivered to Lender a SECURED DEMAND NOTE in the principal amount of ONE MILLION TWO HUNDRED THOUSAND AND NO/100 DOLLARS (\$1,200,000), (which SECURED NOTE, together with all notes issued and accepted in substitution or exchange therefor, and as any of the foregoing may from time to time be modified or extended, is hereinafter sometimes called the "Note"), which Note provides, among other things, for final payment of principal and interest under the Note, if not sooner paid or payable as provided therein, to be due on the earlier of demand made by Lender or December 21, 1996, the Note by this reference thereto being incorporated herein; and

B. Lender is desirous of securing the prompt payment of the Note together with interest and prepayment fees, if any, thereon in accordance with the terms of the Note, and any additional indebtedness accruing to Lender on account of any future payments, advances or expenditures made by Lender pursuant to the Note or this Mortgage (all hereinafter sometimes collectively referred to as the "indebtedness secured hereby").

NOW, THEREFORE, Borrower and Beneficiary, to secure payment of the indebtedness secured hereby and the performance of the covenants and agreements herein contained to be performed by Borrower and Beneficiary, and for good and valuable consideration in hand paid, the receipt and sufficiency whereof are hereby acknowledged, hereby agrees and covenants that:

1. GRANTING CLAUSES.

Borrower and Beneficiary hereby irrevocably and absolutely do by these presents grant, mortgage, convey, transfer, assign, bargain, and sell to Lender, its successors and assigns, with all powers of sale (if any) and all statutory rights under the laws of the State of Illinois, all of Borrower's and Beneficiary's present and hereafter acquired estate, right, title and interest in, to and under, and grants to Lender a security interest in, the following:

(a) The real property described in EXHIBIT A attached hereto and incorporated herein by this reference, which consists of an office building and together with the fixtures and personal property hereinafter described (which real property, interests, fixtures and personal property is hereinafter sometimes referred to as "the Mortgaged Premises"); and

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(b) All and singular the easements, rights-of-way, licenses, permits, rights of use or occupancy, privileges, tenements, appendages, hereditaments and appurtenances and other rights and privileges thereunto belonging or in any wise appertaining, whether now or in the future, and all the rents, issues and profits therefrom;

(c) All right, title and interest, if any, of Borrower, in and to the land lying within any street, alley, avenue, roadway or right-of-way open or proposed or hereafter vacated in front of or adjoining said Mortgaged Premises; and all right, title and interest, if any, of Borrower in and to any strips and gores adjoining said Mortgaged Premises;

(d) All machinery, apparatus, equipment, goods, systems, building materials, carpeting, furnishings, fixtures and property of every kind and nature whatsoever, now or hereafter located in or upon or affixed to the said Mortgaged Premises, or any part thereof, or used or usable in connection with any construction or any present or future operation of said Mortgaged Premises, now owned or hereafter acquired by Borrower or Beneficiary, including, but without limitation of the generality of the foregoing: all items described in EXHIBIT B attached hereto and made a part hereof; all heating, lighting, refrigerating, ventilating, air-conditioning, air-cooling, fire extinguishing, plumbing, cleaning, communications and power equipment, systems and apparatus; and all elevators, switchboards, motors, pumps, screens, awnings, floor coverings, cabinets, partitions, conduits, ducts and compressors; and also including any of such property stored on said Mortgaged Premises or in warehouses and intended to be used in connection with or incorporated into said Mortgaged Premises; it being understood and agreed that all such machinery, equipment, apparatus, goods, systems, fixtures, and property are a part of the said Mortgaged Premises and are declared to be a portion of the security for the indebtedness secured hereby (whether in single units or centrally controlled, and whether physically attached to said real estate or not), excluding, however, personal property owned by tenants of the Mortgaged Premises; and

(e) Any and all awards, payments or insurance proceeds, including interest thereon, and the right to receive the same, which may be paid or payable with respect to the Mortgaged Premises as a result of (1) the exercise of the right of eminent domain, or (2) the alteration of the grade of any street, or (3) any fire, casualty, accident, damage or other injury to or decrease in the value of the Mortgaged Premises, to the extent of all amounts which may be secured by this Mortgage at the date of receipt of any such award or payment by Lender, and of the reasonable counsel fees, costs and disbursements incurred by Lender in connection with the collection of such award or payment. Borrower and Beneficiary agree to execute and deliver, from time to time, such further instruments as may be requested by Lender to confirm such assignment to Lender of any such award or payment.

TO HAVE AND TO HOLD the Mortgaged Premises with all rights, privileges and appurtenances thereunto belonging, and all rents, issues and profits therefrom, unto Lender, its successors and assigns, forever, for the uses and purposes herein expressed.

THIS MORTGAGE IS GIVEN TO SECURE:

- (1) Payment of the indebtedness secured hereby;
- (2) Payment of such additional sums with interest thereon which may hereafter be loaned to Borrower by Lender or advanced under the Loan Documents (hereinafter defined), even though the aggregate amount outstanding at any time may exceed the original principal balance stated herein and in the Note

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(provided, however, that the indebtedness secured hereby shall in no event exceed an amount equal to three hundred percent (300%) of the face amount of the Note); and

(3) The due, prompt and complete performance of each and every covenant, condition and agreement contained in this Mortgage, the Note and every other agreement, document and instrument to which reference is expressly made in this Mortgage, defined as a Security Instrument in the Note, or which at any time evidences or secures the indebtedness evidenced by the Note (this Mortgage, the Note, Security Instruments and all such other instruments are hereinafter sometimes collectively referred to as the "Loan Documents").

2. REPRESENTATIONS AND COVENANTS.

It is a condition of this Mortgage that the representations and covenants made in this Section 2 be true, correct and complete upon the execution and delivery of the Loan Documents, and Borrower and Beneficiary hereby represent and covenant to Lender that:

2.1 Title to Mortgaged Premises. As of the date of delivery of this Mortgage, Borrower is well and lawfully seized of the Mortgaged Premises as a good and indefeasible estate in fee simple, free and clear of all liens, encumbrances, easements, covenants, conditions, and restrictions (including, with respect to the fixtures and personal property referred to herein, security interests, conditional sales contracts, title retention financing devices and anything of a similar nature except those made or entered into by a tenant of the Mortgaged Premises), subject, however, to the matters set forth in EXHIBIT C attached hereto, and has good and full power and lawful authority to grant, mortgage, convey and grant a security interest in the same in the manner herein provided; and that Borrower will make any further assurances of title that Lender may require and will defend the Mortgaged Premises against all claims and demands whatsoever.

2.2 Due Organization, Authority. Beneficiary is duly organized and validly existing limited liability company and in good standing under the laws of the State of Illinois and has power and authority adequate to carry on its business as presently conducted, to own the Mortgaged Premises, to make and enter into the Loan Documents and to carry out the transactions contemplated therein.

2.3 Execution, Delivery and Effect of Loan Documents. The Loan Documents have each been duly authorized, executed and delivered by Borrower and Beneficiary, and each is intended to be a legal, valid and binding obligation of Borrower and Beneficiary, enforceable in accordance with its terms, except to the extent that the enforceability thereof may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights generally and subject to the exercise of judicial discretion in accordance with general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

2.4 Other Obligations. The execution and performance of the Loan Documents and all agreements and covenants therein and the consummation of the transactions contemplated thereby will not result in any breach of, or constitute a default under, any contract, agreement, document or other instrument to which Borrower or Beneficiary is a party or by which Borrower or Beneficiary may be bound or affected, and do not and will not violate or contravene any law to which Borrower or Beneficiary is subject; nor do any such instruments impose or contemplate any obligations which are or will be inconsistent with the Loan Documents. No approval by, authorization of, or filing with any federal, state or municipal or other governmental commission, board or agency or other governmental authority is necessary in connection with the authorization, execution and delivery of the Loan Documents.

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2.5 Licenses and Permits. There are presently in full force and effect all certificates, licenses, and permits (herein collectively "Permits") required by applicable laws, ordinances, codes and regulations for the operation of the Mortgaged Premises and Borrower agrees that such Permits shall be available for Lender's inspection at all reasonable times and that copies thereof shall be furnished to Lender upon request. Borrower agrees to keep all Permits and to cause all Permits now or hereafter required in full force and effect and to obtain renewals thereof before expiration. Borrower further agrees that it shall constitute an Event of Default hereunder if Borrower at any time shall fail to keep in full force and effect all necessary permits and licenses described herein.

2.6 Compliance with Laws.

(a) The improvements forming part of the Mortgaged Premises and the use of the Mortgaged Premises comply with all applicable laws and regulations, including without limitation environmental protection, health, building and zoning laws and ordinances and set-back and parking requirements; and it shall constitute an Event of Default hereunder if the improvements forming part of the Mortgaged Premises or the use of the Mortgaged Premises are at any time determined not to be in compliance with all applicable laws and regulations, and such lack of compliance may cause such improvements to be vacated or demolished, or may result in the institution of proceedings for vacation or demolition of the improvements, or may otherwise, in Lender's reasonable judgment, adversely affect the value of Lender's security in the Mortgaged Premises.

(b) Other than has been disclosed by the Phase I Environmental Report of the Mortgaged Premises by Carlson Environmental, Inc. dated January 11, 1995, Borrower or Beneficiary have received no notice that the environmental or ecological condition of the Mortgaged Premises is in violation of any Environmental Law (as defined in Section 3.19 below); and Borrower and Beneficiary, after making reasonable inquiry, has no knowledge of any such violation.

(c) Other than has been disclosed by the Phase I Environmental Report of the Mortgaged Premises by Carlson Environmental, Inc. dated January 11, 1995, Borrower or Beneficiary have received no notice that the soil, surface, water or ground water of or on the Mortgaged Premises are not free from any spill, release or discharge of any Hazardous Substance (as defined in Section 3.19 below), and Borrower and Beneficiary, after making reasonable inquiry, has no knowledge of any such spill, release or discharge.

(d) Other than has been disclosed by the Phase I Environmental Report of the Mortgaged Premises by Carlson Environmental, Inc. dated January 11, 1995, Borrower and Beneficiary have not used, or permitted to be used, the Mortgaged Premises for the treatment, storage or disposal of any such Hazardous Substance (as defined in Section 3.19 below), nor in any other manner which could lead to the imposition on Borrower or Beneficiary of liability under any Environmental Law, and Borrower and Beneficiary, after making reasonable inquiry, have no knowledge of such use by any predecessor in interest or any other individual or entity.

(e) Other than has been disclosed by the Phase I Environmental Report of the Mortgaged Premises by Carlson Environmental, Inc. dated January 11, 1995, to the best of Borrower's and Beneficiary's knowledge, there have been no releases at, upon, under, or within, nor past or ongoing migration from neighboring lands to the Mortgaged Premises of any Hazardous Substance.

(f) No underground storage tank is located on the Mortgaged Premises.

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(g) Other than has been disclosed by the Phase I Environmental Report of the Mortgaged Premises by Carlson Environmental, Inc. dated January 11, 1995, to the best of Borrower's and Beneficiary's knowledge, there is no Hazardous Substance located on, at or within the Mortgaged Premises.

(h) Neither Borrower nor Beneficiary have received notice of violation of any Environmental Law, nor have they, or either of them, committed, or, to the best of their knowledge, permitted, any activity in violation of the representations made in paragraphs (a) through (g) of this Section 2.6.

(i) For the purposes of this Section 2.6 and Section 3.17 below, any one or more of the following shall constitute a determination of non-compliance with an Environmental Law:

(1) Determination by any governmental authority of such non-compliance, if the effect of such determination is not stayed within thirty (30) days by the commencement of an appropriate administrative or judicial appeal; or

(2) A judgment by a court of competent jurisdiction of such non-compliance, if the effect of such judgment is not stayed within thirty (30) days by the commencement of an appropriate judicial appeal.

2.7 Improvements. The improvements are served by electric, gas, sewer, water, telephone and other utilities required for the present and contemplated uses and operation thereof. Any and all streets and driveways necessary for access to the Mortgaged Premises, and other on-site and off-site improvements necessary for the present and contemplated uses and operation of the Mortgaged Premises and for service by utilities have been completed, are serviceable and have been accepted or approved by appropriate governmental bodies.

3. BORROWER'S AND BENEFICIARY'S COVENANTS OF PAYMENT AND OPERATION.

3.1 Performance of Covenants in Loan Documents. Borrower shall fully perform, observe and comply with all agreements, covenants, conditions and provisions hereof, of the Note and of the other Loan Documents, and shall duly and punctually pay to Lender the sums of money expressed in the Note, with interest thereon and all other sums required to be paid by Borrower pursuant to the provisions of this Mortgage and the other Loan Documents, all without any deduction or credit for taxes or other similar charges paid by Borrower.

3.2 Payment of Taxes.

(1) Payment of Taxes. Borrower shall pay or cause to be paid all taxes, assessments and other similar charges of whatever nature, ordinary and extraordinary, and to whomsoever assessed which are now or may hereafter be assessed or levied against the Mortgaged Premises or any portion thereof or interest therein or which become payable with respect thereto or with respect to the occupancy, use or possession thereof, before the same become delinquent; and shall deliver to Lender within thirty (30) days after the payment thereof receipts of the proper officers for such payment. In default thereof, Lender may, but shall not be obligated to, pay such taxes, assessments, and other similar charges, including any penalties or interest thereon (without inquiring into the validity or invalidity of such taxes, assessments or other similar charges and of which payment, amount and validity thereof, the receipt of the proper officer shall be conclusive evidence), and any

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amount so paid by Lender shall become immediately due and payable by Borrower with interest as described in Section 6.6 hereof until paid and shall be secured by this Mortgage. Borrower shall have the right to contest the amount or validity of any such tax, assessment or other similar charge by appropriate legal proceedings if: (i) the legal proceedings shall operate to prevent the collection of such taxes, assessment or other similar charge so contested and the sale of the Mortgaged Premises or any part thereof to satisfy the same, and (ii) Borrower (unless such taxes, assessment or other similar charge have been paid in full under protest) shall deposit with Lender or with the appropriate court or other governmental authority or title insurance company satisfactory to Lender an amount, with such subsequent additions thereto as may be necessary, sufficient in Lender's opinion to pay such taxes, assessment or other similar charge, together with all estimated interest and penalties in connection therewith, and all charges that may be assessed in said legal proceedings against, or may become a charge on, the Mortgaged Premises.

3.3 Insurance.

(1) Required Coverage. Borrower shall procure, deliver to, and maintain for the benefit of Lender as an additional insured to the extent of the balance of the indebtedness secured hereby during the continuance of this Mortgage and until the same is fully satisfied and released, the following insurance policies:

(a) "All-Risk" casualty insurance policies insuring the buildings, structures, improvements and fixtures now existing or hereafter constructed upon the Mortgaged Premises against all loss or damage occasioned by casualties which, under good insurance practice, are commonly insured against for buildings, structures, and improvements of like character in Cook County, Illinois. The amount of such insurance shall be not less than one hundred percent (100%) of the full replacement cost of such buildings, structures and improvements, without deduction for depreciation, as reasonably determined by Lender from time to time.

(b) Insurance covering pressure vessels, pressure piping and machinery, if any, and all major components of any centralized heating or air-conditioning systems located in the buildings and improvements forming part of the Mortgaged Premises, in an amount satisfactory to Lender, such policies also to insure against physical damage to such buildings and improvements arising out of a peril covered thereunder;

(c) Insurance on the items of tangible property described in Section 5 hereof and in EXHIBIT B attached hereto and any replacements and substitutions therefor (hereinafter sometimes collectively referred to as "the Equipment") against loss or damage by fire and other hazards presently included in so-called "extended coverage" policies and against vandalism and malicious mischief in an amount satisfactory to Lender, but in any event in such amount as is necessary to preclude the Borrower from being a co-insurer;

(d) Comprehensive general public liability and property damage coverage with a broad form coverage endorsement in such amounts and with such companies as are satisfactory to Lender; and

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(e) Such other insurance on the Mortgaged Premises, the buildings and improvements forming a part thereof and the Equipment (and any replacements or substitutions therefor) and in such amounts as may from time to time be reasonably required by the Lender against other insurable hazards and perils which at the time are commonly insured against for projects, buildings, structures, improvements and equipment of like character in Cook County, Illinois, due regard being given to type of project and the height and type of the buildings and improvements, and their construction, location, use and occupancy.

(2) **Form of Policies.** All policies of insurance required hereunder shall be in such form, issued by such companies, and in such amounts as may be acceptable to Lender, shall be kept on deposit with Lender, and shall contain a non-contributory standard mortgagee clause acceptable to Lender, with loss payable to Lender, a lender's loss payable endorsement, a waiver of subrogation endorsement, and replacement cost and agreed amount endorsements or equivalent clauses or endorsements acceptable to Lender, and shall further provide that such insurance coverage may not be changed or cancelled without at least thirty (30) days' prior written notice to Lender. Borrower shall promptly pay when due any premiums on any policy or policies of insurance required hereunder, and will deliver to Lender renewals of such policy or policies at least fifteen (15) days prior to the expiration dates thereof, said policies and renewals or invoices therefor to be marked "paid" by the issuing company or agent. Upon Borrower's failure to comply with the requirements of this Section 3.3, Lender may, in its discretion, procure any insurance required hereunder in the amounts required pursuant to the terms and provisions of this Mortgage and pay the premiums due therefor, and any amounts so paid by Lender shall become immediately due and payable by Borrower with interest as described in Section 6.6 hereof, and shall be secured by this Mortgage. The delivery to Lender of any policy of insurance hereunder or renewals thereof shall constitute an assignment to Lender of all unearned premiums thereon as further security for the payment of the indebtedness secured hereby. If any foreclosure action or other proceeding hereunder is successfully maintained by Lender, all right, title, and interest of Borrower in or to any policy or policies of insurance then in force shall vest in Lender insofar as such policy or policies apply to the Mortgaged Premises.

(3) **Application of Loss Proceeds.** In the event of any loss or damage to any part of the Mortgaged Premises, Borrower shall give prompt notice thereof to Lender, and Lender may make proof of such loss or damage if the same is not promptly made by Borrower or if the Lender deems it desirable to do so. In the event of such loss or damage: (1) all proceeds of insurance shall be payable to Lender to the extent of the full amount of the remaining unpaid indebtedness secured hereby; (2) any affected insurance company is authorized and directed to make payment thereof directly to Lender to the extent of the full amount of the then remaining unpaid indebtedness secured hereby; and (3) Lender is authorized and empowered to settle, adjust or compromise any claims for loss, damage, or destruction under any policy or policies of insurance. Borrower agrees to execute (and to cause its beneficiary or beneficiary from time to time to execute), upon demand by Lender, all receipts, vouchers, releases and other instruments which may be necessary or desirable in aid of the aforementioned authorizations. All such insurance proceeds may, at the sole discretion of Lender, be: (a) applied to the restoration, repair, replacement or rebuilding of the Mortgaged Premises; or (b) applied to the payment of the last maturing installment or installments of the indebtedness secured hereby (whether or not then due and payable); or (c) paid over to the Borrower, on such terms and conditions as the Lender in its discretion may specify, to be used to repair the buildings, structures, improvements or Equipment, or to build or install new ones in their

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place, or for any other purpose or object satisfactory to the Lender, without affecting the lien of or the priority of the lien of this Mortgage for the full amount of the indebtedness secured hereby before such payment took place. The Lender shall not be held responsible for any failure to collect any insurance proceeds due under the terms of any policy regardless of the cause of such failure. If Lender elects or is required to make such insurance proceeds available for repair, restoration or rebuilding of the Mortgaged Premises, any portion of such proceeds not needed or used in such repair, restoration, rebuilding or building shall be applied to the payment of the indebtedness secured hereby, as provided above.

(4) Use of Proceeds. Notwithstanding anything contained in Section 3.3 to the contrary, in the event of any insured damage to or destruction of the Mortgaged Premises or any part thereof (herein called an "Insured Casualty") and if, in the reasonable judgment of Lender, the Mortgaged Premises can be restored, to an architectural and economic unit of the same character and not less valuable than the same prior to the Insured Casualty, and adequately securing the outstanding balance of the indebtedness secured hereby, and the insurers do not deny liability to the insureds, then, if no Event of Default, as hereinafter defined, shall have occurred and be then continuing, the proceeds of insurance shall be applied to reimburse the Borrower for the cost of restoring, repairing, replacing or rebuilding the Mortgaged Premises subject to Insured Casualty. Such proceeds shall be disbursed by Lender subject to such additional conditions as Lender shall reasonably impose to insure that such restoration is completed properly and in a lien-free manner.

3.4 Maintenance, Repairs and Restoration; Compliance with Laws.

(1) Maintenance and Repair. Borrower shall keep and maintain the Mortgaged Premises in good order, condition and repair and will make, regardless of the sufficiency of insurance proceeds, as and when the same shall become necessary, all structural and non-structural, exterior and interior, ordinary and extraordinary, foreseen and unforeseen, repairs, restorations and maintenance, including any replacements, necessary or appropriate including, without limitation, repairs of damage or destruction caused by fire or other casualty or as the result of any taking under the power of eminent domain. Borrower shall give Lender prompt written notice of any damage or destruction to the Mortgaged Premises caused by fire or other casualty. Borrower will suffer or commit no waste to the Mortgaged Premises or any portion thereof. Lender and any person authorized by Lender shall have the right, but not the obligation, to enter upon and inspect the Mortgaged Premises at all reasonable times.

(2) Compliance with Laws. Borrower shall promptly comply or cause compliance with all covenants and restrictions affecting the Mortgaged Premises and with all present and future laws, ordinances, rules, regulations and other requirements, including, without limitation, pollution control and environmental protection laws and regulations of all governmental authorities with respect to the Mortgaged Premises and each portion thereof and with respect to the use or occupation thereof.

Borrower will not initiate or acquiesce in any zoning variation or reclassification of the Mortgaged Premises or any part thereof without Lender's prior written consent.

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3.5 Sale, Assignment, Further Encumbrance and Other Liens and Charges.

(1) **Beneficiary.** Borrower covenants and represents that, as of the date hereof, the sole beneficiary of Borrower, with sole power of direction over Borrower, is Beneficiary. Borrower has been appropriately directed to, and Borrower shall, give prompt written notice to Lender and obtain the consent of Lender before acting upon or executing: (i) any direction to convey or assignment or transfer of any legal or beneficial interest in the Mortgaged Premises or in the beneficial interest of Borrower to any third party; or (ii) any conveyance, assignment or transfer by operation of law of any legal or beneficial interest in the Mortgaged Premises or in Borrower.

(2) **Prohibition on Transfer of Ownership and Beneficial Interests.** Lender, at its option, shall have the unqualified right to accelerate the maturity of the Note causing the full principal balance and accrued interest under the Note to be immediately due and payable without notice to Borrower, if:

(a) Borrower shall, without the prior written consent of Lender, sell, (on an installment basis or otherwise), transfer, convey, or assign the legal title to all or any portion of the Mortgaged Premises or an interest in Beneficiary, whether by operation of law, voluntarily or otherwise;

(b) Beneficiary shall, without the prior written consent of Lender, sell, contract to sell (on an installment basis or otherwise), transfer, convey, or assign the beneficial interest, or any part thereof, under the Trust Agreement with Borrower (including a collateral assignment thereof), whether by operation of law, voluntarily or otherwise.

In connection with Lender giving its consent to any sale, assignment or other transfer referred to in (a) or (b) above, Borrower agrees that:

(i) Lender's right to consent or not to consent to such sale, assignment or transfer shall be in Lender's sole and unfettered discretion;

(ii) If Lender gives its consent to any such sale, assignment or transfer, such buyer, assignee or transferee shall agree to perform all obligations hereunder of his or its seller, assignor or transferor subject to the provisions of Section 9.2 hereof if such buyer, assignee or transferee is a trustee under an Illinois land trust, and this Mortgage shall be amended to evidence such transfer or assignment and such agreement by the buyer, assignee or transferee;

(iii) Whether Lender consents to any proposed sale, assignment or transfer or not, Borrower shall reimburse Lender for all of Lender's out-of-pocket expenses for legal fees and other costs which Lender may incur with respect to such transfer, conveyance or assignment;

(iv) The provisions of Subsection 3.5(4) hereof shall be applicable with respect to any such sale, assignment or transfer; and

(v) If Lender approves any such sale, assignment or transfer, no buyer, assignee or transferee shall have any further right to sell, assign or transfer any interest as described in (a) or (b) above

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without first obtaining Lender's prior written consent and satisfying the provisions of (i) through (iv) above of this Subsection 3.5(2).

(3) **Prohibition on Further Encumbrances**. Borrower covenants and agrees that this Mortgage is and will be maintained as a valid first lien on the Mortgaged Premises, and that Borrower will not, without the prior written consent of Lender, directly or indirectly, create, suffer or permit to be created or filed against the Mortgaged Premises, or any portion thereof, or against the rents, issues and profits therefrom, or against the beneficial interest in Borrower, any mortgage lien, security interest, or other lien or encumbrance superior or inferior to the lien of this Mortgage, except the lien of current general taxes duly levied and assessed but not yet due and payable. In the event Borrower shall suffer or permit, without the prior written consent of Lender, any superior or junior lien to be attached to the Mortgaged Premises or to the beneficial interest in Borrower, the Lender, at its option, has the unqualified right to accelerate the maturity of the Note causing the full principal balance and accrued interest to be immediately due and payable without notice to Borrower.

(4) **Consent Not a Waiver**. Any consent by Lender, or any waiver by Lender of an Event of Default shall not constitute a consent to, or a waiver of any right, power, privilege, option or remedy of the Lender upon, a subsequent Event of Default.

(5) **Mechanic's Liens; Utility Charges**. Borrower shall keep and maintain the Mortgaged Premises free from all liens and encumbrances, whether claimed by operation of law or by virtue of any expressed or implied contract, of persons supplying labor or materials, or both of them, entering into the construction, modification, repair, restoration or maintenance of the Mortgaged Premises or any portion thereof. If any such liens shall be filed against the Mortgaged Premises, Borrower agrees to discharge the same of record within thirty (30) days after Borrower has notice thereof, provided, however, Borrower shall have the right, at Borrower's sole expense, to contest the validity of any such liens asserted by persons allegedly supplying such labor and materials by appropriate legal proceedings so long as: (i) such legal proceedings shall be diligently prosecuted and shall operate to prevent the collection of such liens so contested and the sale of the Mortgaged Premises or any part thereof to satisfy the same, and (ii) Borrower shall deposit an amount reasonably satisfactory to Lender, to be held by Lender without the payment of interest or to be held by an appropriate court or other governmental authority or title insurance company satisfactory to Lender or cause the title insurance company to insure over such contested liens, in any case until such contested liens are removed of record or are satisfied. Borrower shall pay promptly, when due, all charges for utilities or services, including without limitation any charges for electricity, gas, water and sewer, and all license fees, rents and other charges for the use of vaults, canopies or other appurtenances to the Mortgaged Premises. If Borrower fails to pay promptly all such charges described above, Lender may, but shall not be obligated to, pay same and any amounts so paid by Lender shall become immediately due and payable by Borrower with interest as described in Section 6.6 hereof and shall be secured by this Mortgage. Borrower agrees that Lender is under no obligation to inquire into or establish the validity of any liens or claims of lien or interest before making advances to satisfy or settle all or any part of said claims.

(6) **Legal Proceedings**. If any civil action or proceeding shall be instituted to evict Borrower or recover possession of the Mortgaged Premises or any part thereof or for any other purposes affecting the Mortgaged Premises or this Mortgage, Borrower will, promptly upon service thereof on or by Borrower, deliver to Lender a true copy of each petition, summons, complaint,

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notice of motion, order to show cause and all other process, pleadings and papers, however designated, served in any such civil action or proceeding.

In recognition of such considerations and for the purposes of (i) protecting Lender's security, both of the repayment by Borrower and value of the Mortgaged Premises, (ii) giving Lender the full benefit of its bargain and contract with Borrower, (iii) allowing Lender to raise the interest rate and/or collect assumption fees and (iv) keeping the Mortgaged Premises free of any subordinate financing liens, Borrower has agreed to the provisions of Subsection 3.5, and agrees that if such provisions may be deemed a restraint on alienation, then they are reasonable restraints on alienation.

3.6 Impairment of Security.

(1) Without limitation of any other provisions hereof, Borrower shall not, except in connection with the lien hereof, assign, in whole or in part, the rents, income or profits arising from the Mortgaged Premises without the prior written consent of Lender; any such assignment made without Lender's prior written consent shall be null and void and of no force and effect, and the making thereof shall at the option of Lender constitute an Event of Default under this Mortgage. Without limitation of the foregoing, Borrower will not without the prior written consent of Lender in any other manner impair the security of this Mortgage for the payment of the indebtedness secured hereby, it being understood that any such impairment shall at the option of Lender also constitute an Event of Default hereunder.

(2) Lender shall have the power (but not the obligation) to: (i) institute, become a party to, and maintain such civil actions and proceedings as it may deem expedient to prevent any impairment of the Mortgaged Premises by any acts which may be unlawful or in violation of this Mortgage; (ii) preserve and protect its interest in the Mortgaged Premises and in the rents, issues, profits and revenues arising therefrom; and (iii) restrain the enforcement of or compliance with any legislative or other governmental enactment, regulation, rule, order or other requirement that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, regulation, rule, order or other requirement would impair the security hereunder or be prejudicial to the interest of the Lender, and all reasonable costs and expenses incurred by the Lender in connection therewith (including, without limitation, reasonable attorneys' fees) shall be paid by Borrower to Lender on demand, with interest at the rate specified in Section 6.6 hereof, and shall be additional indebtedness secured hereby.

3.7 Lease Conditions and Assignment of Leases and Rents.

(1) Borrower will not, and no beneficiary of Borrower will, without the prior written consent of Lender, enter into any lease of all or any part of the Mortgaged Premises.

(2) In order to further secure payment of the Note and the observance and performance of Borrower's obligations hereunder, Borrower hereby assigns, transfers and sets over to Lender all of Borrower's right, title and interest in, to and under all of the leases now or hereafter affecting any part of the Mortgaged Premises and in and to all of the rents, issues, profits and other benefits now or hereafter arising from any part of the Mortgaged Premises. Borrower shall execute and deliver such further instruments evidencing the assignment of leases and rents, issues, profits and other benefits of the Mortgaged Premises as may reasonably be requested by Lender from time to time.

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Lender shall be liable to account only for rents, issues, profits and other benefits of the Mortgaged Premises actually received by Lender pursuant to the provisions of this Mortgage.

(3) Borrower will not, and no beneficiary of Borrower will, without the prior written consent of Lender in each instance, cancel any of the leases now or hereafter assigned to Lender pursuant to Section 3.9(4) hereof, or terminate or accept a surrender thereof or reduce the payment of the rent thereunder or modify, amend or waive any provisions of any of said leases (except as any lease approved by Lender may otherwise expressly provide for such modification) or accept any prepayment of rent therein (except any amount which may be required to be prepaid by the terms of any such lease).

(4) Upon an Event of Default hereunder and subject to other applicable provisions of this Mortgage, Lender, at its option, is authorized to foreclose this Mortgage subject to the rights of any lessees of the Mortgaged Premises, and the failure to make such lessees parties to any foreclosure proceedings and to foreclose such lessees' rights will not constitute, or be asserted by Borrower to constitute, a defense to any proceedings instituted by Lender to collect the indebtedness secured hereby.

(5) Neither Borrower nor Beneficiary will, in connection with any lease of all or any part of the Mortgaged Premises, agree to assume the obligations of the tenant thereunder with respect to an existing lease of said tenant, without first delivering to Lender a letter indemnifying Lender and holding Lender harmless from and against all liability with respect to the assumption by Borrower or Beneficiary of said obligations.

3.8 Books and Records; Financial Statements.

Borrower shall keep or cause to be kept proper books and records with respect to the Mortgaged Premises and operation thereof. Lender shall have the right to examine the books of account of Borrower and Beneficiary and the statements furnished by Borrower pursuant to this Section 3.8 (which books, records and statements, and the data used as a basis for their preparation, shall be kept and preserved for at least three (3) years, but in the event of any dispute, such records shall be retained until the final determination of such dispute) and to discuss the affairs, finances and accounts of Borrower and Beneficiary and to be informed as to the same by Borrower and Beneficiary, all at such reasonable times and intervals as Lender may desire. Borrower and Beneficiary shall keep and preserve its records within fifty (50) miles of the Mortgaged Premises, and shall permit Lender or its representatives to make copies and excerpts therefrom.

3.9 Use of Premises; Licenses; Compliance with Laws; Prohibition of Certain Liens.

(1) Use of Mortgaged Premises. Borrower represents and covenants that the building located upon and forming part of the Mortgaged Premises is fully equipped in a manner appropriate for operation as a general office building, and Borrower shall, from time to time and as is necessary and appropriate, maintain, replace and repair such equipment as is necessary to operate the Mortgaged Premises. Borrower shall not hereafter acquire any fixtures, equipment, furnishings or apparatus covered by this Mortgage subject to any security interest or other charge or lien having parity with or priority over the lien of this Mortgage.

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(2) Licenses and Compliance with Laws. Borrower shall at all times be, and cause the Mortgaged Premises to be, in compliance with the representations and covenants stated in Sections 2.5, 2.6, 3.17 and 3.18 hereof.

(3) Acquisition of Personalty. Borrower shall execute and deliver, from time to time, such further instruments as may reasonably be requested by Lender to confirm the validity and priority of the lien of this Mortgage on any fixtures, machinery, apparatus and Equipment described herein.

3.10 Taxes on Lender.

(1) In the event of the passage after the date of this Mortgage of any law of the State of Illinois, the United States of America, or any other governmental authority deducting from the value of real estate for the purpose of taxation any lien thereon or changing in any way the laws for the taxation of mortgages or debts secured by mortgages or the manner of collection of any such taxation so as to adversely affect the yield of the debt secured by this Mortgage, the holder of this Mortgage shall have the right to give ninety (90) days' written notice to Borrower requiring the payment of the debt secured hereby, and said debt, shall become due and payable immediately upon the expiration of said ninety (90) days; provided, however, that such requirement of payment shall be ineffective if Borrower is permitted by law to pay the whole of such tax in addition to all other payments required hereunder, without any penalty thereby accruing to Lender and the indebtedness secured hereby, and if Borrower does pay such tax prior to the date upon which payment is required by such notice.

(2) In the event it is hereafter claimed that any tax or other governmental charge or imposition is due, unpaid or payable by Borrower or Lender upon the indebtedness (other than income tax on the interest or prepayment fee receivable by Lender with respect thereto), including any recording tax, documentary stamps or other tax or imposition on the Note or this Mortgage, or any other instrument securing the indebtedness secured hereby, Borrower will forthwith pay such tax, charge or imposition and within a reasonable time thereafter deliver to Lender satisfactory proof of payment thereof.

3.11 Use of Loan Proceeds.

(1) Business Loan. Borrower and Beneficiary covenant and agree that all of the proceeds of the Note secured by this Mortgage will be used solely for business purposes and in furtherance of the regular business affairs of the Borrower and Beneficiary, and the entire principal obligation secured hereby constitutes: (i) a "business loan" as that term is defined in, and for all purposes of, Section 4(1)(c) of paragraph 6404, Chapter 17 of the Illinois Revised Statutes; and (ii) "a loan secured by a mortgage on real estate" within the purview and operation of Section 4(1)(1) of paragraph 6404 of Chapter 17 of said Statutes.

(2) Usury. All agreements between Borrower and Lender (including, without limitation, those contained in this Mortgage, the Note and any other Loan Documents) are expressly limited so that in no event whatsoever shall the amount paid or agreed to be paid to the Lender exceed the highest lawful rate of interest permissible under the laws of the State of Illinois. If, from any circumstances whatsoever, fulfillment of any provision hereof or of the Note or any other

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documents securing the indebtedness secured hereby, at the time performance of such provision shall be due, shall involve the payment of interest exceeding the highest rate of interest permitted by law which a court of competent jurisdiction may deem applicable hereto, then, *ipso facto*, the obligation to be fulfilled shall be reduced to the highest lawful rate of interest permissible under the laws of the State of Illinois; and if for any reason whatsoever, the Lender shall ever receive as interest an amount which would be deemed unlawful, such interest shall be applied to the payment of the last maturing installment or installments of the indebtedness secured hereby (whether or not then due and payable) and not to the payment of interest.

3.12 **Recorded Instruments.** Borrower shall promptly perform and observe, or cause to be performed and observed, all of the terms, covenants and conditions of all instruments of record affecting the Mortgaged Premises, non-compliance with which might affect the security of this Mortgage or impose any duty or obligation upon Borrower or upon any owner, lessee or occupant of the Mortgaged Premises or any part thereof; and Borrower shall do or cause to be done all things reasonably necessary to preserve intact and unimpaired any and all easements, appurtenances and other interests and rights in favor of or constituting any portion of the Mortgaged Premises.

3.13 **Indemnity; Payment of Charges.** Borrower shall promptly: (a) pay and discharge any and all license fees or similar charges, with penalties and interest thereon, which may be imposed for the use of any ramps, vaults, chutes, areas and other space adjoining or near the Mortgaged Premises; and (b) cure any violation of law and comply with any order of any governmental authority, agency or instrumentality in respect of the repair, replacement or condition of the ramps, sidewalks, curbs or any vaults, chutes, areas or other space described in clause (a) above, adjoining or near said Mortgaged Premises. In the event of any default under either (a) or (b) of the preceding sentence, Lender may, but shall not be obligated to, pay any and all such fees or similar charges, with penalties and interest thereon, and the charges for such repair or replacement; and all monies expended by Lender in connection therewith (including, but not limited to, reasonable legal fees and costs) shall become immediately due and payable by Borrower, with interest as described in Section 6.6 hereof until paid, and shall be secured by this Mortgage.

3.14 **Estoppel Certificate.** At any time and from time to time upon not less than ten (10) days' prior written request by Lender, Borrower shall deliver to Lender, or to any person designated by Lender, a written statement executed and acknowledged in recordable form certifying: (1) that this Mortgage, the Note and the Loan Documents are in full force and effect (or, if there have been modifications, that this Mortgage, the Note and the Loan Documents are in full force and effect as modified and stating the modifications); (2) the date to which the indebtedness and all other charges secured hereby have been paid; (3) that neither Borrower nor Lender is in default under this Mortgage, the Note or the Loan Documents (or, if such a default allegedly exists, stating those claimed); (4) that there are no offsets or defenses to the payment of the sums secured hereby (or, if there are alleged offsets or defenses, specifying such alleged offsets or defenses); and (5) such other information as Lender may reasonably require.

3.15 **Additional Acts, Etc.** Borrower will do, execute, acknowledge and deliver, or cause to be done, executed, acknowledged and delivered, all such further acts, conveyances, notes, mortgages, security agreements, financing statements and assurances as Lender shall reasonably require for accomplishing the purposes of this Mortgage; and the Borrower shall pay the costs of filing fees, recording fees, searches, reasonable attorneys' fees and other costs relating to the foregoing.

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3.16 Environmental Matters; Notice; Indemnity.

(a) Borrower will not, and Beneficiary will not, install, use, generate, manufacture, produce, store, release, discharge or dispose of on, under or about the Mortgaged Premises, nor transport to or from the Mortgaged Premises, any Hazardous Substance (as defined below) nor allow any other person or entity to do so except under conditions and in minor amounts as may be expressly permitted by applicable laws, regulations and ordinances.

(b) Borrower and Beneficiary will keep and maintain the Mortgaged Premises in compliance with, and shall not cause or permit the Mortgaged Premises to be in violation of, any Environmental Law (as defined in Section 3.19 below).

(c) Borrower or Beneficiary will give prompt written notice to Lender of:

(1) any proceeding, investigation or inquiry commenced by any governmental authority with respect to the presence of any Hazardous Substance (as defined in Section 3.19 below) on, under or about the Mortgaged Premises or the migration thereof to or from adjoining property;

(2) all claims made or threatened by any individual or entity against Borrower or Beneficiary or the Mortgaged Premises relating to any loss or injury allegedly resulting from any Hazardous Substance;

(3) the discovery by Borrower or Beneficiary of any occurrence or condition on any real property adjoining or in the vicinity of the Mortgaged Premises which might cause the Mortgaged Premises or any part thereof to be subject to any restriction on the ownership, occupancy, transferability or use of the Mortgaged Premises under any Environmental Law;

(4) any release, discharge, spill or other occurrence of any Hazardous Substance on or from the Mortgaged Premises, or any migration of any Hazardous Substance from neighboring lands to the Mortgaged Premises;

(5) the receipt by Borrower or Beneficiary of any notice from any governmental agency or authority or from any tenant or other occupant or from any other person with respect to any alleged release, discharge, spill or other occurrence of any Hazardous Substance; and

(6) all results of tests of underground storage tanks on or about the Mortgaged Premises, together with copies of such test results.

(d) Lender shall have the right and privilege to: (i) join in and participate in, as a party if it so elects, any one or more legal proceedings or actions initiated with respect to the Mortgaged Premises; and to (ii) have all costs and expenses thereof (including without limitation Lender's reasonable attorneys' fees and costs) paid by Borrower.

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(e) Borrower and Beneficiary shall protect, indemnify and hold Lender and its directors, officers, employees, agents, successors and assigns harmless from and against any and all loss, damage, cost, expense and liability (including without limitation reasonable attorneys' fees and costs) directly or indirectly arising out of or attributable to the installation, use, generation, manufacture, production, storage, release, threatened release, discharge, disposal or presence of a Hazardous Substance on, under, from or about the Mortgaged Premises, including without limitation: (i) the imposition by any governmental authority of any lien or so-called "super priority lien" upon the Mortgaged Premises; and (ii) all foreseeable consequential damages; and (iii) the costs of any required or necessary repair, cleanup or detoxification of the Mortgaged Premises; and (iv) the preparation and implementation of any closure, remedial or other required plans. This indemnity shall survive the satisfaction, release or extinguishment of the lien of this Mortgage, including without limitation any extinguishment of the lien of this Mortgage by foreclosure or deed in lieu thereof.

(f) Lender shall have the right and privilege (but not the obligation) to enter the Mortgaged Premises to make reasonable inspections of its condition, including but not limited to soil and ground water sampling, and including but not limited to inspections for any Hazardous Substance.

(g) Borrower hereby represents and warrants that all matters certified by Borrower to Lender in a certain Certificate and Indemnity Agreement are true and complete, and Borrower agrees to notify Lender in writing immediately upon learning that any of the statements contained in such Agreement either was not true when made or is no longer true, it being understood that any event which causes any of the statements in the foregoing Agreement to be no longer true shall at the option of Lender also constitute an Event of Default hereunder.

3.17 **Remedial Work.** If any investigation, site monitoring, containment, cleanup, removal, restoration or other remedial work of any kind or nature (the "Remedial Work") is necessary or desirable under any applicable federal, state or local law, regulation or ordinance, or under any judicial or administrative order or judgment, or by any governmental person, board, commission or agency, because of or in connection with the current or future presence, suspected presence, release or suspected release of a Hazardous Substance into the air, soil, ground-water, surface water or soil vapor at, on, about, under or within the Mortgaged Premises or portion thereof, Borrower or Beneficiary shall, within thirty (30) days after written demand for performance by Lender (or, notwithstanding anything to the contrary in any of the Loan Documents, within such shorter time as may be required under any applicable law, regulation, ordinance, order or agreement), commence and thereafter diligently prosecute to completion all such Remedial Work. All Remedial Work shall be performed by contractors approved in advance by Lender and under the supervision of a consulting engineer approved in advance by Lender. All costs and expenses of such Remedial Work (including without limitation the reasonable fees and expenses of Lender's counsel) incurred in connection with monitoring or review of the Remedial Work shall be paid by Borrower. If Borrower shall fail or neglect to timely commence or cause to be commenced, or shall fail to diligently prosecute to completion, such Remedial Work, the Lender may (but shall not be required to) cause such Remedial Work to be performed; and all costs and expenses thereof, or incurred in connection therewith (including, without limitation, the reasonable fees and expenses of Lender's counsel), shall be paid by Borrower to Lender forthwith after demand and shall be a part of the indebtedness secured hereby.

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3.18 Definitions.

(a) The term "Environmental Law" means and includes, without limitation, any federal, state or local law, statute, regulation or ordinance pertaining to health, industrial hygiene or the environmental or ecological conditions on, under, from or about the Mortgaged Premises, including without limitation each of the following: the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"); the Resource Conservation and Recovery Act of 1976, as amended ("RCRA"); the Federal Hazardous Materials Transportation Act; the Toxic Substance Control Act, as amended, the Illinois Environmental Protection Act, as amended; the Clean Air Act, as amended; the Federal Water Pollution Control Act, as amended; and the rules, regulations and ordinances of the U.S. Environmental Protection Agency, the Illinois Environmental Protection Agency, the Army Corps of Engineers and the County of Cook and of all other agencies, boards, commissions and other governmental bodies and officers having jurisdiction over the Mortgaged Premises or the use or operation thereof.

(b) The term "Hazardous Substance" means and includes, without limitation:

(i) those substances included within the definitions of "hazardous substances", "hazardous materials", "toxic substances" or "solid waste" in any of the Environmental Laws;

(ii) those substances listed in the U.S. Department of Transportation Table or amendments thereto (49 CFR 172.101) or by the U.S. Environmental Protection Agency (or any successor agency) as hazardous substances (40 CFR Part 302 and any amendments thereto);

(iii) those other substances, materials and wastes which are or become regulated under any applicable federal, state or local law, regulation or ordinance or by any federal, state or local governmental agency, board, commission or other governmental body, or which are or become classified as hazardous or toxic by any such law, regulation or ordinance;

(iv) any material, waste or substance which is any of the following: (A) asbestos or asbestos-containing materials; (B) polychlorinated biphenyls; (C) radon gas; (D) urea formaldehyde foam insulation; (E) designated or listed as a "hazardous substance" pursuant to §311 or §307 of the Clean Water Act (33 U.S.C. §§1251 et seq.); (F) explosive; or (G) radioactive.

4. CONDEMNATION AND EMINENT DOMAIN.

4.1 If all or any substantial part of the Mortgaged Premises are damaged, taken or acquired, either temporarily or permanently, as a result of any condemnation proceeding or by exercise of the power of eminent domain, or by the alteration of the grade of any street affecting the Mortgaged Premises, or by private agreement or sale in lieu of any of the foregoing, the entire indebtedness secured hereby shall, at Lender's option, become immediately due and payable. As additional security for the payment of the indebtedness secured by this Mortgage, the amount of any award or other payment for such taking or damages made in consideration thereof, to the extent of the full amount of the then remaining unpaid indebtedness secured hereby, is hereby assigned to Lender, who is empowered to collect and receive the

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same and to give proper receipts therefor in the name of Borrower, and the same shall be paid forthwith to Lender. Any award or payment so received by Lender may, at the option of Lender and after the payment of all its expenses in connection with the foregoing proceedings: (a) be retained and applied, in whole or in part, to the indebtedness secured hereby, in such manner as Lender may determine, or (b) be released, in whole or in part and on such terms and conditions and according to such procedures as Lender may require, to Borrower for the purpose of altering, restoring or rebuilding any part of the Mortgaged Premises which may have been altered, damaged or destroyed as the result of such taking, alteration or proceeding; provided, however, that Lender shall not be obligated to see to the application of any amounts so released, and such release shall not affect the validity and priority of the lien of this Mortgage for the full indebtedness secured hereby before the release or payment took place.

For the purposes of this Section 4.1, reference to a "substantial part" of the Mortgaged Premises means any portion of the land or building, the loss of which, in Lender's reasonable judgment, would materially adversely affect the value of the security granted to Lender hereby.

Notwithstanding anything contained in this Section 4.1 to the contrary, if in the reasonable judgment of Lender, the Mortgaged Premises can be restored to an architectural and economic unit of the same character and not less valuable than the Mortgaged Premises prior to such taking and adequately securing the outstanding balance of the indebtedness secured hereby, then if no Event of Default, as hereinafter defined, shall have occurred and be then continuing, such award shall be applied to reimburse Borrower for the cost of restoring the portion of the Mortgaged Premises remaining after such taking. Such award proceeds shall be disbursed by Lender subject to such additional conditions as Lender shall reasonably impose to insure that such restoration is completed properly and in a lien-free manner.

5. SECURITY AGREEMENT; FINANCING STATEMENT.

5.1 Security Agreement.

(1) Grant of Security Interest. In addition to and not in substitution for any other interest granted herein, Borrower and Beneficiary hereby grant to Lender an express security interest in, and mortgages to the Lender, all goods, types and items of property owned by the Borrower and Beneficiary which are described in Subsection 5.1(2) below (herein, "the Equipment") whether now or hereafter erected on or placed in or upon the Mortgaged Premises or any part thereof, and all replacements thereof, additions and accessions thereto and products and proceeds thereof, to further secure the payment of the Note, the payment of all other sums due from the Borrower to the Lender, and the performance by Borrower of all the covenants and agreements set forth herein. Borrower represents and covenants that, except for the security interest granted hereby, Borrower is the owner of the Equipment free from any adverse lien, security interest or encumbrance and that Borrower has made payment in full for all such Equipment; and Borrower will defend and protect the Equipment and title thereto against all claims and demands of all persons at any time claiming the Equipment or any interest therein. Borrower will upon request from Lender deliver to Lender such further security agreements, chattel mortgages, financing statements and evidence of ownership of such items as Lender may reasonably request.

(2) Property Covered. The security interest hereby granted to Lender shall cover the following types or items of property now or hereafter owned by the Borrower and used in connection with, and located upon, the Mortgaged Premises: All property described in EXHIBIT B attached hereto. In addition, Borrower hereby grants to Lender an express security interest in all tenements, hereditaments, easements, appendages, licenses, privileges and appurtenances belonging or in any

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way appertaining to the Mortgaged Premises, and all interests in property, rights and franchises or any part thereof, together with all the reversions and remainders, and to the extent permitted by law, all rents, tolls, issues and profits from the Mortgaged Premises, and all the estate, right, title, interest and claims whatsoever, at law and in equity, which Borrower now has or may hereafter acquire with respect to the Mortgaged Premises and the Equipment.

(3) **Additional Covenants.** Borrower and Beneficiary further covenant and agree as follows:

(a) **Transfer or Pledge of the Equipment.** Unless such Equipment becomes obsolete or is replaced by Equipment of the same value, Borrower and Beneficiary will not sell, assign, pledge, lease or otherwise transfer or encumber the Equipment or any interest therein without the prior written consent of Lender; and will keep the Equipment free from any adverse lien, security interest, or encumbrance other than those stated in **EXHIBIT C**. Without limitation or qualification of the foregoing, Borrower and Beneficiary shall immediately deliver to Lender all proceeds (cash or non-cash) resulting from any sale, assignment, pledge, lease or other transfer of any part of the Equipment, unless, in respect to each such transfer, Lender shall have agreed otherwise in writing.

(b) **Payment of Lender's expenses.** Borrower and Beneficiary shall reimburse Lender for all reasonable costs, charges and fees, including reasonable attorneys' fees, incurred by Lender in preparing and filing security agreements, extension agreements, financing statements, continuation statements, termination statements and chattel searches.

(c) **Representations and Remedies.** The Equipment described herein shall be considered for all purposes a part of the Mortgaged Premises as described herein; all representations and covenants contained in this Mortgage made by Borrower and Beneficiary, including representations of title, shall be deemed as having been made with reference to the Equipment; all agreements, undertakings and obligations of Borrower and Beneficiary stated herein shall apply to the Equipment, including without limitation, obligations regarding insurance, freedom from adverse lien or encumbrance, repair and maintenance; and all remedies of the Lender in the event of any default by Borrower under the terms of this Mortgage or any other instrument evidencing or securing the indebtedness secured hereby shall be available to the Lender against the Equipment.

5.2 **Financing Statement.** This Mortgage also constitutes a financing statement for the purpose of Section 9-402 of the Illinois Uniform Commercial Code and shall constitute a "fixture filing" under such statutes and shall be filed in the real estate records of Cook County, Illinois.

(1) **Name of Debtors:**

First Bank and Trust Company of Illinois, not personally
but as Trustee under Trust Agreement dated
December 8, 1995 and known as Trust Number 10-1991;
and
3703 W. Lake L.L.C., and Illinois limited liability company
Attn: Jack Berger

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Debtor's Mailing Address:

300 East Northwest Highway
Palatine, Illinois 60067
Attention: Land Trust Department

Address of Property:

3703 W. Lake Avenue
Glenview, Illinois 60025

Name of Secured Party:

First Bank and Trust Company of Illinois,
an Illinois banking corporation

Address of Secured Party:

300 East Northwest Highway
Palatine, Illinois 60067
Attention: Michael C. Winter

(2) This financing statement covers the following types or items of property: the property described in Section 5.1 and EXHIBIT B of this instrument; and all other items of personal property now or at any time hereafter owned by Borrower or Borrower's beneficiary and used in connection with the Mortgaged Premises.

(3) Some of the above goods are or are to become fixtures on the real property described herein. Borrower is the record owner of the real property described herein upon which the foregoing fixtures and other items and types of property are located.

6. EVENTS OF DEFAULT; REMEDIES.

6.1 **Defaults.** If any one or more of the following events of default (herein collectively called "Events of Default" and each is separately called an "Event of Default") shall occur, all indebtedness secured hereby, including, without limitation, the whole of the principal sum remaining unpaid under the Note, together with all accrued interest thereon, shall at the option of Lender become immediately due and payable without notice or demand, and may be recovered at once, by foreclosure or otherwise:

(1) The failure by Borrower to make any payment of principal or interest under the Note or this Mortgage within five (5) days of when such amounts are due, or of any deposit required under this Mortgage, or of any other payment required to be made hereunder or under any of the other Loan Documents, in any case when the same becomes due and payable; or

(2) The failure of Borrower or Beneficiary to observe or perform any other term, condition, covenant, agreement, representation or warranty contained herein or in the Note, or the failure of any representation or warranty contained herein or in any of the other Loan Documents

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or in any instrument or certification delivered to Lender in connection with the making of the loan to be true and accurate in all material respects and such failure shall continue for fifteen (15) days after notice thereof is sent to Borrower, provided that if such default is not susceptible to cure within such 15-day period, such 15-day period shall be extended to the extent necessary to permit such cure, if but only if, (i) Borrower shall commence such cure within such 15-day period and shall thereafter prosecute such cure to completion, diligently and without delay, and (ii) no other Event of Default shall occur; or

(3) The occurrence of any default in the observance or performance of any non-monetary term, condition, covenant or agreement in any assignment of lease, assignment of rents, any other Loan Document (excluding the Note and this Mortgage), or any other agreement made as additional security for the performance of the Note and this Mortgage; or

(4) The occurrence of any of the following events:

(a) Borrower or Beneficiary shall generally not pay its or their debts as they become due or shall admit in writing its or their inability to pay its or their debts, or shall make a general assignment for the benefit of creditors;

(b) Borrower or Beneficiary shall commence any case, proceeding or other action seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of it or its or their debts under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, or seeking appointment of a receiver, trustee, custodian or other similar official for it or for all or any substantial part of its or their property;

(c) Borrower or Beneficiary shall take any action, including corporate or partnership action, to authorize any of the actions set forth in Subsections 6.1(4)(a) or 6.1(4)(b); or

(d) Any case, proceeding or other civil action in the nature of a bankruptcy or insolvency proceeding against Borrower or Beneficiary shall be commenced seeking to have an order for relief entered against it or them as debtor(s), or seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of it or them or its or their debts under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, or seeking appointment of a receiver, trustee, custodian or other similar official for it or them or for all or any substantial part of its or their property, and such case, proceeding or other action: (i) results in the entry of an order for relief against it or them which is not fully stayed within thirty (30) Business Days after the entry thereof; or (ii) remains undismissed for a period of ninety (90) days.

6.2 Remedies. Without limitation of the foregoing provisions of this Section 6 or of any other provision hereof or of any other Loan Document, upon the occurrence of an Event of Default and at any time thereafter, Lender shall have the right, at its option and without notice, without waiving or releasing Borrower or Beneficiary from any of their obligations hereunder, to exercise any or all of the following remedies:

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(1) **Acceleration.** Lender may declare the principal balance remaining unpaid under the Note, together with all accrued interest thereon and all other indebtedness secured hereby immediately due and payable.

(2) **Foreclosure.** Lender may foreclose this Mortgage to collect all or any part of the indebtedness secured hereby, by instituting a foreclosure action in any court having jurisdiction. Lender shall have the right to purchase the Mortgaged Premises at any foreclosure sale.

(3) **Offset Rights.** Lender may apply in satisfaction of the indebtedness secured hereby or any amount at any time to become due or payable in connection with the ownership, occupancy, use, restoration or repair of the Mortgaged Premises, any deposits or other sums credited by or due from Lender to Borrower, including, without limitation, insurance proceeds, proceeds of condemnation and funds held in escrow pursuant to Sections 3.2 and 3.3 hereof.

(4) **Cure of Default.** Without releasing Borrower or Beneficiary from any obligation hereunder or under any of the Loan Documents, Lender shall have the right to cure any Event of Default. In connection therewith, Lender may enter upon the Mortgaged Premises and may do such acts and things as Lender deems necessary or desirable to protect the Mortgaged Premises or the leases thereof, including, without limitation:

(a) paying, purchasing, contesting or compromising any encumbrance, charge, lien, claim of lien, taxes or other charges or liabilities against the Mortgaged Premises;

(b) paying any insurance premiums; and

(c) employing counsel, accountants, contractors and other appropriate persons to assist Lender in the foregoing; and all monies expended by Lender in connection therewith (including, but not limited to, reasonable attorneys' fees and costs) shall become immediately due and payable by Borrower, with interest as described in Section 6.6 hereof until paid, and shall be secured by this Mortgage.

(5) **Fossession of Mortgaged Premises.** Lender shall have the right to take physical possession of the Mortgaged Premises and of all books, records, documents and accounts relating thereto and exercise, without interference from Borrower or Beneficiary, any and all rights which Borrower and Beneficiary has with respect to the Mortgaged Premises, including, without limitation, the right, at Borrower's expense, to rent and lease the same and to hire a professional property manager for the Mortgaged Premises. If necessary to obtain possession as provided for herein, Lender may, without exposure to liability from Borrower, Beneficiary or any other persons, invoke any and all legal remedies to dispossess Borrower and including, without limitation, one or more civil actions for forcible entry and detainer, trespass and restitution. In connection with any action taken by Lender pursuant to this Subsection 6.2(5), Lender shall not be liable for any loss sustained by Borrower or Beneficiary resulting from any failure to let the Mortgaged Premises or from any other act or omission of Lender in managing the Mortgaged Premises unless caused by the willful misconduct or bad faith of Lender, nor shall Lender be obligated to perform or discharge any obligation, duty or liability under any lease or by reason of any Loan Document. Borrower and Beneficiary hereby agree to indemnify, hold harmless and defend Lender from and against any liability, loss or damage incurred by Lender under any lease or under any of the Loan Documents

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as a result of Lender's exercise of rights, powers, options, elections or remedies under any of the Loan Documents. Should Lender incur any such liability, the amount thereof shall be secured hereby and Borrower and Beneficiary shall reimburse Lender therefor immediately upon demand. Lender shall have full power to make from time to time all alterations, renovations, repairs and replacements to the Mortgaged Premises as may seem appropriate to Lender.

(6) Appointment of a Receiver. Upon application to a court of competent jurisdiction, Lender shall be entitled to the appointment of a receiver for the Mortgaged Premises, without notice, without regard to the solvency or insolvency of the person or persons, if any, liable for the payment of the indebtedness secured hereby, and without regard to the then value of the Mortgaged Premises, whether the same shall be then occupied as a homestead or not, and Lender may be appointed as such receiver. Such receiver shall have power to collect the rents, issues and profits of the Mortgaged Premises and all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Mortgaged Premises, to the fullest extent permitted by law. The court from time to time may authorize the receiver to apply the net income in his hands in payment in whole or in part of: (a) the indebtedness and other sums secured hereby or by any order or judgment foreclosing this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or of such order or judgment, provided such application is made prior to the foreclosure sale; and (b) the deficiency in case of a sale and deficiency

(7) Uniform Commercial Code Remedies. Lender may exercise any and all rights of a secured party with respect to the Equipment described in Section 5.1 hereof provided under the Illinois Uniform Commercial Code.

(8) Subrogation. Lender shall have and may exercise all rights, powers, privileges, options and remedies of any person, entity or body politic to whom Lender renders payment or performance in connection with the exercise of its rights and remedies under the Loan Documents, including without limitation any rights, powers, privileges, options and remedies under any mechanic's or vendor's lien or liens, superior titles, mortgages, deeds of trust, liens, encumbrances, rights, equities and charges of all kinds heretofore or hereafter existing on the Mortgaged Premises, to the extent that the sums are paid or discharged pursuant to Subsection 6.2(4) or from the proceeds of the Note, whether or not released of record.

(9) Other. Lender may take such other actions or commence such other proceedings as Lender deems necessary or advisable to protect its interest in the Mortgaged Premises and its ability to collect the indebtedness secured hereby as are available under applicable laws, ordinances and rules of courts having jurisdiction.

(10) Mortgagee in Possession. Nothing herein contained shall be construed as constituting the Lender a mortgagee in possession in the absence of the actual taking of possession of the Mortgaged Premises by Lender.

6.3 Sums Received by Lender. All sums received by Lender under Section 6.2 above, less all costs and expenses incurred by Lender under Section 6.2, including, without limitation, reasonable attorneys' fees and disbursements, property management fees, costs of alterations, renovations, repairs and replacements made or authorized by Lender and all expenses incident to Lender taking possession of the

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Mortgaged Premises, and such sums as Lender deems appropriate as a reserve to meet future expenses of the Mortgaged Premises, shall be applied to the indebtedness secured hereby in such order as Lender shall determine. Thereafter, any balance shall be paid to the person or persons legally entitled thereto.

6.4 **Fees and Expenses; Distribution of Foreclosure Sale Proceeds.** If Lender shall incur or expend any sums, including reasonable attorneys' fees, whether or not in connection with any action or proceeding to sustain the lien of this Mortgage or its priority, or to protect or enforce any of Lender's rights hereunder, or to recover any indebtedness secured hereby, or on account of its being Lender hereunder or its making the loan evidenced by the Note, including without limitation Lender's participation in any bankruptcy proceeding commenced by or against Borrower or Borrower's beneficiary, all such sums shall become immediately due and payable by Borrower and Beneficiary with interest thereon as described in Section 6.2 hereof. All such sums shall be secured by this Mortgage and be a lien on the Mortgaged Premises prior to any right, title, interest or claim in, to or upon the Mortgaged Premises attaching or accruing subsequent to the date of this Mortgage. Without limitation of the generality of the foregoing, in any civil action to foreclose the lien hereof, there shall be allowed and included as additional indebtedness secured hereby in the order or judgment for sale all costs and expenses which may be paid or incurred by or on behalf of Lender or the holder of the Note for reasonable attorneys' fees, appraisers' fees, receiver's costs and expenses, insurance, taxes, outlays for documentary and expert evidence, costs for preservation of the Mortgaged Premises, stenographer's charges, publication costs and costs of procuring all abstracts of title, title searches and examinations, title insurance policies and commitments therefor, and similar data and assurances with respect to title as Lender or holders of the Note may deem to be reasonably necessary either to prosecute such civil action or to evidence to bidders at any sale which may be had pursuant to such order or judgment the true condition of the title to or value of the Mortgaged Premises or for any other reasonable purpose. The amount of any such costs and expenses which may be paid or incurred after the order or judgment for sale is entered may be estimated and the amount of such estimate may be allowed and included as additional indebtedness secured hereby in the order or judgment for sale.

6.5 **Lender's Exercise of Rights.**

(1) **Effect of Modification.** If Lender in one or more instances: (i) grants any extension of time or forbearance with respect to the payment of any indebtedness secured by this Mortgage; (ii) takes other or additional security for the payment thereof; (iii) waives or fails to exercise any right granted herein or under the Note or in any other Loan Document; (iv) grants, with or without consideration, any release from the lien of this Mortgage or other Loan Document of the whole or any part of the security held for the payment of indebtedness secured hereby (whether or not such security is the property of Borrower, Beneficiary, or others); (v) agrees to any amendment or modification of any of the terms and provisions hereof or of the Note or of any other instrument securing the Note; then and in any such event, any such act or omission to act shall not: (a) release Borrower, Beneficiary, or any comakers, sureties or guarantors of this Mortgage or of the Note from any covenant of this Mortgage or the Note or any other Loan Document, nor (b) preclude Lender from exercising any right, power, privilege, option or remedy granted herein or in any other Loan Document or so intended to be granted upon the occurrence of any Event of Default or otherwise, nor (c) in any way impair or affect the lien or priority of the lien of this Mortgage.

(2) **Remedies Not Exclusive.** No right, power, privilege, option or remedy of Lender under this Mortgage, the Note or any other Loan Document shall be exclusive of, but shall be in addition to, every other right, power, privilege, option and remedy under this Mortgage and the

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Note and every other right, power, privilege, option and remedy now or hereafter existing at law or in equity. Every such right, power, privilege, option and remedy may be exercised concurrently or independently, and when and as often as may be deemed expedient by Lender. No delay in exercising or omission to exercise any right, power, privilege, option or remedy accruing on any default shall impair any such right, power, privilege, option or remedy or shall be construed to be a waiver of any such default or acquiescence therein, nor shall it affect any subsequent default of the same or a different nature. A waiver of any of the terms, covenants, conditions or provisions hereof, or of the Note or of any other instrument given by Borrower or Beneficiary to secure the indebtedness secured hereby, shall apply to the particular instance and at the particular time only; and no such waiver shall be deemed a continuing waiver, but all of the terms, covenants, conditions and other provisions of this Mortgage, the Note and of such other instruments shall survive and continue to remain in full force and effect.

6.6 Interest on Advances. If Lender makes any advances hereunder (exclusive of advances of principal evidenced by the Note), Lender will promptly notify Borrower of such advances and the amounts so advanced shall become immediately due and payable with interest at the Default Rate specified in the Note applicable to a period when an uncured Event of Default has occurred. The failure of Lender to give the notice contemplated by this Section 6.6 shall not affect the securing by this Mortgage of those amounts so advanced.

6.7 Valuation and Appraisal. To the extent permitted by law, Borrower shall not and will not apply for or avail itself of any appraisement, valuation, stay, extension or exemption laws or any so-called "Moratorium Laws", whether now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, and Borrower hereby waives the benefit of all such laws. Borrower for itself and all who may claim through or under it waives any and all right to have the property and estates comprising the mortgaged property marshaled upon any foreclosure of the lien hereof, and agrees that any court having jurisdiction to foreclose such lien may order the Mortgaged Premises sold in one parcel as an entirety or in such parcels, manner or order as the Lender in its sole discretion may elect.

6.8 Release and Waiver of Homestead and Right of Redemption. To the fullest extent allowed by applicable law, Borrower hereby releases and waives: (i) any and all rights under and by virtue of the homestead exemption laws of the State of Illinois; (ii) all rights to retain possession of the Mortgaged Premises after an Event of Default; and (iii) any and all rights of redemption from sale under any order or judgment of foreclosure of this Mortgage or under any sale or statute or order, decree or judgment of any court relating to this Mortgage, on behalf of itself and each and every person acquiring any interest in or title to any portion of the Mortgaged Premises, it being the intent hereof that any and all such rights of redemption of Borrower and of all such other persons are and shall be deemed to be hereby waived to the maximum extent and with the maximum effect permitted by the provisions of the Illinois Mortgage Foreclosure Law, including without limitation Sections 15-1601 and 15-1602 and any other applicable sections thereof, and to the maximum extent and with the maximum effect permitted by the provisions of all other applicable laws or by any successor or replacement statutes.

7. GENERAL.

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

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7.2 Notices. All notices, demands and requests given or required or desired to be given hereunder by Borrower or Lender shall be in writing and shall be delivered in person or by overnight express delivery or by United States certified mail, return receipt requested, postage prepaid, as follows:

If to the Borrower:

First Bank and Trust Company of Illinois, as Trustee
under Trust Agreement dated December 8, 1995
and known as Trust Number 10-1991
300 East Northwest Highway
Palatine, Illinois 60067
Attention: Land Trust Department

With a copy to:

3703 W. Lake L.L.C.
901 W. Huron
Chicago, Illinois 60622
Attention: Jack Berger

With a copy to:

Gould & Ratner
222 North LaSalle Street
Suite 800
Chicago, Illinois 60601
Attention: Stephen Sandler, Esq.

If to the Lender:

First Bank and Trust Company of Illinois
300 East Northwest Highway
Palatine, Illinois 60067
Attention: Michael C. Winter

With a copy to Lender's counsel:

ROSS & HARDIES
150 North Michigan Avenue
Suite 2500
Chicago, Illinois 60601-7567
(312) 558-1000
Attn: Robert W. Glantz, Esq.

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or to such other addresses as Borrower or Lender may from time to time designate by written notice given as herein required. All notices and copies thereof shall be sent or delivered by the same means of transmission.

Notices, demands and requests given by certified mail as aforesaid shall be deemed sufficiently served or given for all purposes hereunder three (3) days after the time such notice, demand or request shall be deposited in the mails. Notice sent by overnight express delivery service shall be deemed served or given on the first (1st) business day following the date such notice is delivered to the carrier.

7.3 **Definition of Terms.** Whenever used in this instrument, unless the context shall otherwise clearly require, the term "Borrower" and the term "Beneficiary" and the term "Lender" shall include their legal representatives, successors and assigns, as the case may be, of Borrower, Beneficiary and Lender, and all persons claiming by, through, or under Borrower, Beneficiary or Lender; the term "person" shall include any individual, partnership, corporation, trust, unincorporated association or government, or any agency or political subdivision hereof, or any two or more of the foregoing acting in concert; the singular shall include the plural, and the plural, the singular; and the gender used shall include the other genders.

7.4 **Successors and Assigns.** Subject to and without limiting the provisions herein restricting or limiting Borrower's and Beneficiary's right of assignment and transfer, all of the terms, covenants, conditions and agreements herein set forth shall be binding upon and inure to the benefit of the respective heirs, executors, administrators, legal representatives, successors and assigns, as the case may be, of the parties hereto.

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

7.6 **Assignment by Lender.** Lender may assign all or any portion of its interest hereunder and its rights granted herein and in the Note to any person, trust, financial institution or corporation as Lender may determine; and upon such assignment, such assignee shall thereupon succeed to all the rights, interests and options of Lender herein and in the Note contained. Until advised in writing of the transfer of the Note and of Lender's interest in this Mortgage, Borrower and Beneficiary shall regard Lender named on page 1 hereof as the holder of the Note and as the mortgagee herein, and shall make payments accordingly and be protected in doing so.

7.7 **Applicable Law.** This Mortgage shall be governed by the laws of the State of Illinois, which laws shall also govern and control the construction, enforceability, validity and interpretation of this Mortgage.

7.8 **Severability.** In the event that any provision of this Mortgage or the application thereof to any person or circumstance shall be invalid or unenforceable or contrary to law, the remaining provisions of this Mortgage and the application of such provision or provisions to other persons or circumstances shall not be affected thereby and shall be fully effective and enforceable to the extent permitted by law.

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7.9 **No Partnership.** Borrower and Beneficiary acknowledge and agree that in no event shall Lender be deemed to be a partner or joint venturer with Borrower or Beneficiary. Without limitation of the foregoing, Lender shall not be deemed to be such a partner or joint venturer on account of its becoming a Lender in possession or exercising any rights pursuant to this Mortgage or pursuant to any other instrument or document securing any portion of the indebtedness secured hereby or otherwise.

7.10 **Subrogation.** In the event the proceeds of the loan made by Lender to Borrower, or any part thereof, or any amount paid out or advanced by Lender, shall be used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any prior lien or encumbrance upon the Mortgaged Premises or any part thereof, then the Lender shall be subrogated to such other lien or encumbrance and to any additional security held by the holder thereof and shall have the benefit of the priority of all of same.

7.11 **Headings.** Paragraph and section headings contained herein are for convenience of reference only and are not intended to define, limit or describe the scope or intent of any provision of this instrument.

7.12 **Conflict.** In the event of any conflict or inconsistency between the terms and provisions of this Mortgage and the terms and provisions of any other Loan Document (excluding the Note), the terms and provisions of this Mortgage shall control.

7.13 **Incorporation of Other Documents.** It is acknowledged and agreed that the indebtedness secured hereby is, in addition to this Mortgage, secured by the other Loan Documents. Borrower and Beneficiary covenant and agree that all the terms, covenants, conditions, representations, obligations and provisions of the Note and the other Loan Documents are, by this reference, adopted and incorporated into this Mortgage to the same full extent and with the same binding force and effect as if all such terms, covenants, conditions, representations, obligations and provisions were herein stated in full, and Borrower and Beneficiary will pay, perform, and observe, or cause to be paid, performed and observed, all the terms, covenants, conditions, representations, obligations and provisions of the Note and the other Loan Documents, it being the express intent that each of the Note, and the other Loan Documents complement and supplement one another to the extent necessary or required to protect, preserve and confirm the rights, powers and remedies of Lender in respect of the indebtedness secured hereby and that any default under this Mortgage, or the other Loan Documents shall also be a default under all of such documents.

8. POSSESSION AND DEFEASANCE.

8.1 **Possession.** Until the occurrence of an Event of Default and except as otherwise expressly provided to the contrary, Borrower shall retain full possession of the Mortgaged Premises, subject, however, to all of the terms and provisions of the Loan Documents.

8.2 **Defeasance.** If all of the indebtedness secured hereby is paid as the same becomes due and payable and if all of the covenants, warranties, conditions, undertakings and agreements made in the Loan Documents are materially kept and performed, then in that event only, all rights under the Loan Documents shall terminate and the Mortgaged Premises shall become wholly clear of the liens, grants, security interests, conveyances and assignments evidenced hereby, and Lender shall release or cause to be released, such liens, grants, assignments, conveyances and security interests in due form at Borrower's cost, and this Mortgage shall be void. Recitals of any matters or facts in any instrument executed by Lender under this Section 8 shall be conclusive proof of the truthfulness thereof. To the extent permitted by applicable law, such an

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instrument may describe the grantee as "the person or persons legally entitled thereto". Lender shall not have any duty to determine the rights of persons claiming to be rightful grantees of any of the Mortgaged Premises. When the Mortgaged Premises have been fully released, such release shall operate as a reassignment of all future rents, issues and profits of the Mortgaged Premises to the person or persons legally entitled thereto, unless such release expressly provides to the contrary.

9. LIMITATIONS ON LIABILITY.

9.1 This instrument is executed by First Bank and Trust Company of Illinois, not personally, but as Trustee as aforesaid, in the exercise of the power and authority conferred upon and vested in it as such Trustee (and said Trustee hereby warrants that it possesses full power and authority to execute this instrument), and it is expressly understood and agreed that nothing herein contained shall be construed as

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creating any liability on said Trustee personally to pay any indebtedness accruing hereunder, or to perform any covenant either express or implied herein contained (it being understood and agreed that each of the provisions hereof, except the warranty hereinabove contained, shall constitute a condition and not a covenant or agreement regardless of whether the same may be couched in language of a promise or covenant or agreement), all such personal liability, if any, being expressly waived by the Lender and by every person now or hereafter claiming any right hereunder, and that so far as the said Trustee is concerned, the Lender shall look solely to the Mortgaged Premises hereby mortgaged or conveyed and to other security agreements, documents or instruments or guaranties evidencing or securing the indebtedness secured hereby for the payment thereof, by the enforcement of the liens, charges and other rights created by said Loan Documents, in the manner herein and in said Loan Documents provided.

IN WITNESS WHEREOF, the undersigned has executed and delivered this instrument as of the day and year first above written.

LOAN POWER:

First Bank and Trust Company of Illinois, not personally but as Trustee under Trust Agreement dated December 8, 1995 and known as Trust Number 10-1991

By: [Signature]
Name: Michael [Signature]
Its: President

ATTEST:

By: [Signature]
Name: Rob Glantz
Its: Attorney

(Impress corporate seal here)

BENEFICIARY:

3703 W. Lake L.L.C.
an Illinois limited liability company

By: [Signature]
Name: Jack Berger
Its: Manager

ATTEST:

By: [Signature]
Name: Robert S. Naiskin
Its: Manager

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STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

The foregoing instrument was acknowledged before me this 21st day of December 8, 1995, by Michael Winter, President and Trust Officer of First Bank and Trust Company of Illinois, on behalf of the corporation, as Trustee under Trust No. 10-1991.

[Handwritten Signature]
NOTARY PUBLIC

NOTARIAL SEAL
MARIA MCINTOSH
Notary Public, State of Illinois
(Impress Notarial Seal Here) - 10-98

My commission expires: 1/10, 1998

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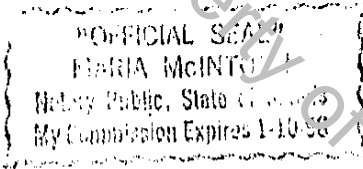
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STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Jack Berger, the manager of 3703 W. Lake L.L.C., an Illinois limited liability company (the "Company"), personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that he signed and delivered the said instruments as his free and voluntary act, and on behalf of the free and voluntary act of the Company, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 21st day of December, 1995.



[Signature]

Notary Public

My Commission expires:

 1/10/98

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EXHIBIT A

MORTGAGED PREMISES

P.I.N: 04-28-300-028-0000

PARCEL 1:

Lot 2 in Morelli's resubdivision of Lots 1,2, and 3 of Part of the West 1/2 of the Southwest 1/4 of Section 28, Township 42 North, Range 12, East of the Third Principal Meridian, in Cook County, Illinois.

PARCEL 2:

Non-Exclusive, Perpetual Easements in Favor of Parcel 1, aforesaid as created by Reciprocal Grant of Easements dated July 31, 1989 and recorded August 4, 1989 as Document 89358281 for Ingress and egress from and to Lake Avenue over so much of Lot 1 in said Morelli's Subdivision as is presently or subsequently improved as Part of a driveway and Lanes for use of vehicular traffic used in connection with said Parcel 1, and over those portions of Lot 1 in said subdivision for the use of marked parking spaces or lanes between marked parking spaces, the present improvements being those depicted on that certain plat of survey prepared by Certified Survey Company Dated July 21, 1989 and described as order number 740237-B, now or hereafter located partially on Lot 1 and Lot 2 in Morelli's subdivision aforesaid.

COMMONLY KNOWN AS 3703 West Lake Avenue, Glenview, Illinois

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EXHIBIT B

DESCRIPTION OF COLLATERAL

An express security interest is granted in the following:

1. All of Borrower's and Beneficiary's right, title and interest in personal property of any kind or nature whatsoever, whether tangible or intangible, which is used or will be used in the construction of, or is or will be placed in or upon, or is derived from or used or enjoyment of the real property and the buildings and improvements constructed thereon located at 3703 W. Lake Avenue, Glenview, Illinois (as more fully described in Exhibit A of the instrument to which this Exhibit is attached, the "Mortgaged Premises").

2. The security interest granted herein attaches, without limitation, to all accounts, documents, instruments, chattel paper, equipment, machinery, fixtures, general intangibles, inventory (as such terms are defined in the Uniform Commercial Code of the State of Illinois), furniture, carpeting and subcontracts for the construction, reconstruction or repair of improvements, bonds, permits, licenses, guarantees, warranties, causes of action, judgments, claims, profits, rents, security deposits, utility deposits, refunds of fees, insurance premiums, deposits paid to any governmental authority, letters of credit, insurance policies and insurance proceeds, any awards that may be made by any condemning authority for any partial or total taking of the Mortgaged Premises by condemnation or eminent domain or any conveyance in lieu thereof, together with all present and future attachments, accretions, accessions, replacements, and additions thereto and products and proceeds thereof.

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EXHIBIT C

LIST OF PERMITTED TITLE EXCEPTIONS

1. General Real Estate Taxes for 1995 and subsequent years, not yet due and payable.
2. Items E, F, G, H, I, J, K, L, M, N, and O on that certain Commitment for Title Insurance Schedule B from Chicago Title Insurance Company dated December 7, 1995 as Order No.: 1401 007584900D2

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