

# UNOFFICIAL COPY

PREPARED BY:

GREG G. ROTTER, ESQ.  
CAPIN & ASSOCIATES  
300 W. WASHINGTON STREET-SUITE 409  
CHICAGO, ILLINOIS 60606

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DEPT. OF RECORDING 439.50  
120009 TRAN 5095 10/21/96 15:17:00  
43488 + BK # 96-801213  
COOK COUNTY RECORDER

Mortgage

THIS MORTGAGE is made on Feb 15 1996 between at American National Bank and Trust Company of Chicago as Successor Trustee to / NBD Bank

not personally, but as Trustee under a Trust Agreement dated November 15, 1993 and known as Trust No. 4003-AM whose address is 100 E. Kensington Road, Arlington Heights, IL 60004 (the "Mortgagor") and The First Northern Bank of Chicago an Illinois banking corporation whose address is 111 E. Buss Avenue, Mt. Prospect, IL 60056 (the "Mortgagee").

\* To be Deleted when this Mortgage is not exercised by a Trust.

The Mortgagor MORTGAGES, CONVEYS AND WARRANTS to the Mortgagee real property and all the buildings, structures and improvements on it described as:

Land located in the City of Mt. Prospect County of Cook, State of Illinois:

See Exhibit A attached.

(the "Premises")

Commonly known as: 790 E. Rand Road, Mt. Prospect, Illinois

Tax Parcel Identification No. 03-35-300-039

The Premises also includes all of the Mortgagor's title and interest in the following:

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

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The Premises are unencumbered except as follows. Schedule B of First American Title Insurance Company title commitment NO. 0000161 nos. 2, 3, 4, 5, 6, 13, 14, 18, 19, 20, 21, 22 and 23.

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

This Mortgage secures the following (the "Debt"):

(i) The note(s) dated February 15, 1996 in the principal amount(s) of Five Hundred Forty Thousand and No/100 (\$540,000.00) respectively, maturing on July 14, 1997 executed and delivered by \_\_\_\_\_ to the Mortgagee with interest at the per annum rate of Prime Rate + 2.50% percent (   %) ("Note Rate") floating on the principal balance remaining from time to time unpaid. Interest after default or maturity of the note, whether by acceleration or otherwise, on the principal balance of the note remaining from time to time unpaid shall be at the per annum rate of three percent (  3   %) above the Note Rate \_\_\_\_\_; and

(ii) The guaranty of the debt of Cotec, Inc., an Illinois corporation dated March 15, 1996 executed and delivered by James Cook, as President and Dolores Fenger, as Secretary to the Mortgagee; and

(iii) Installment Business Loan in the principal amount of \$ \_\_\_\_\_, maturing on \_\_\_\_\_ executed and delivered by \* to the Mortgagee with interest at the per annum rate of \_\_\_\_\_ on the principal balance including any extensions, renewals, modifications or replacements without limit as to number or frequency.

**FUTURE ADVANCES, CROSS LIEN AND LIMITATION ON AMOUNT OF MORTGAGE:** Notwithstanding anything to the contrary contained in this Mortgage, the amount secured by this Mortgage, including all other present and future, direct and indirect obligations and liabilities of the Mortgagor, or any one or more of them, with or without others, but excluding any obligation or debt for personal, family or household expenses unless the note or guaranty expressly states that it is secured by this Mortgage to the Mortgagee, shall not exceed the principal sum of \$ 1,080,000.00 at any one time outstanding.

This Mortgage shall also secure the performance of the promises and agreements contained in this Mortgage.

The Mortgagor promises and agrees as follows:

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

2. **TAXES:** The Mortgagor shall pay, when due, and before any interest, collection fees or penalties shall accrue, all taxes, assessments, fines, impositions, and other charges which may become a lien prior to this Mortgage. Should the Mortgagor fail to make those payments, the Mortgagee may at its option and at the expense of the Mortgagor pay the amounts due for the account of the Mortgagor. Upon the request of the Mortgagee, the Mortgagor shall immediately furnish to the Mortgagee all notices of amounts due and receipts evidencing payment. The Mortgagor shall promptly notify the Mortgagee of any lien or all or any part of the Premises and shall promptly discharge any unpermitted lien or encumbrance.

3. **CHANGE IN TAXES:** In the event of the passage of any law or regulation, state, federal or municipal, subsequent to the date of this Mortgage, which changes or modifies the laws now in force governing the taxation of mortgages or debts secured by mortgages, or the manner of collecting those taxes, the Debt shall become due and payable immediately at the option of the Mortgagee.

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

\*James Cook, individually and general partner, Dolores Fenger, individually and general partner and Clarence Fenger, individually and general partner DBA Cook-Fenger Partnership, a general partnership and Cotec, Inc., an Illinois corporation

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Mortgagee may require from time to time. All insurance policies and renewals must be acceptable to the Mortgagee, must provide for payment to the Mortgagee in the event of loss, must require 30 days notice to the Mortgagee in the event of nonrenewal or cancellation, and must be delivered to the Mortgagee within thirty (30) days prior to their respective effective dates. Should the Mortgagor fail to insure or fail to pay the premiums on any insurance or fail to deliver the policies or certificates or renewals to the Mortgagee, then the Mortgagee at its option may have the insurance written or renewed and pay the premiums for the account of the Mortgagor. In the event of loss or damage, the proceeds of the insurance shall be paid to the Mortgagee alone. No loss or damage shall itself reduce the Debt. The Mortgagee is authorized to adjust and compromise a loss without the consent of the Mortgagor, to collect, receive and receipt for any proceeds in the name of the Mortgagee and the Mortgagor and to endorse the Mortgagor's name upon any check in payment of proceeds. The proceeds shall be applied first toward reimbursement of all costs and expenses of the Mortgagee in collecting the proceeds and then toward payment of the Debt or any portion of it, whether or not then due or payable, or the Mortgagee at its option may apply the proceeds, or any part to the repair or rebuilding of the Premises provided that the Mortgagor is not then or at any time during the course of restoration of the Premises in default under this Mortgage and has complied with all requirements for application of the proceeds to restoration of the Premises as Mortgagee, in its sole discretion may establish.

**5. RESERVES FOR TAXES AND INSURANCE:** Mortgagor shall, if requested by Mortgagee, pay to Mortgagee, at the time of and in addition to the scheduled installments of principal and/or interest due under the Debt, a sum equal to (a) the amount estimated by the Mortgagee to be sufficient to enable Mortgagee to pay at least thirty (30) days before they become due and payable, all taxes, assessments and other similar charges levied against the Premises, plus (b) the amount of the annual premiums on any policies of insurance required to be carried by the Mortgagor, divided by (c) the number of installments due each year ((a) and (b) are collectively referred to as the "Charges"). Upon notice at any time, the Mortgagor will, within ten (10) days, deposit such additional sum as may be required for the payment of increased Charges. These sums may be commingled with the general funds of the Mortgagee, and no interest shall be payable on them nor shall these sums be deemed to be held in trust for the benefit of the Mortgagor. Notwithstanding payment of any sums by the Mortgagor to the Mortgagee under the terms of this section, the Mortgagee shall have no obligation to pay any Charges. The obligation of the Mortgagor to pay the Charges is not affected or modified by the arrangements set out in this section. Payment by the Mortgagee on any one or more occasions of all or any part of the Charges shall not be construed as obligating it to pay any Charges on any other occasion. If the Mortgagee elects to pay any Charge, it shall not be required to do so at any time prior to the date on which penalties, interest or collection fees begin to accrue. If the Mortgagee elects to pay any premium on any policy of insurance required to be carried by the Mortgagor, it may do so at any time prior to the cancellation of the policy.

In the event of foreclosure of this Mortgage, any of the moneys then remaining on deposit with the Mortgagee or its agent shall be applied against the Debt prior to the commencement of foreclosure proceedings. Any default by the Mortgagor in the performance of the provisions of this section shall constitute a default under this Mortgage.

**6. WASTE:** The Mortgagor shall not commit or permit waste on the Premises nor do any other act causing the Premises to become less valuable. The Mortgagor will keep the Premises in good order and repair and in compliance with all material respects with any law, regulation, ordinance or contract affecting the Premises and, from time to time make all needful and proper replacements so that fixtures, improvements and Equipment will at all times be in good condition, fit and proper for their respective purposes. Should the Mortgagor fail to effect any necessary repairs, the Mortgagee may at its option and at the expense of the Mortgagor make the repairs for the account of the Mortgagor. The Mortgagor shall use the Premises in conformance with all applicable laws, ordinances and regulations. The Mortgagee or its authorized agent shall have the right to enter upon and inspect the Premises at all reasonable times. The Mortgagor unconditionally agrees to timely pay all fees with respect to inspections of the Premises.

**7. ALTERATIONS, REMOVAL:** No building, structure, improvement, fixture, personal property, or Equipment constituting any part of the Premises shall be removed, demolished or substantially altered without the prior written consent of the Mortgagee.

**8. PAYMENT OF OTHER OBLIGATIONS:** The Mortgagor shall also pay all other obligations which may become liens or charges against the Premises for any present or future repairs or improvements made on the Premises, or for any other goods, services, or utilities furnished to the Premises and shall not permit any lien or charge of any kind securing the repayment of borrowed funds (including the deferred purchase price for any property) to accrue and remain outstanding against the Premises.

**9. ASSIGNMENT OF LEASES AND RENTS:** As additional security for the Debt, the Mortgagor assigns to the Mortgagee all oral or written leases, and the rents, issues, income and profits under all leases or licenses of the Premises, present and future. The Mortgagor will comply with all terms of all leases.

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**10. ASSIGNMENT OF INTEREST AS TENANT OR PURCHASER:** If the Mortgagor's interest in the Premises is that of a tenant or a purchaser, the Mortgagor also assigns, mortgages and warrants to the Mortgagee, as additional security for the Debt, all of the Mortgagor's title and interest in and to the agreements by which it is leasing or purchasing any part or all of the Premises, including all modifications, renewals and extensions and any purchase options contained in that or any other agreement. The Mortgagor agrees to pay each installment of rent, principal and interest required to be paid by it under the lease, land contract or other agreement when each installment becomes due and payable whether by acceleration or otherwise. The Mortgagor further agrees to pay and perform all of its other obligations under the lease, land contract or other agreement.

If the Mortgagor defaults in the payment of any installment of rent, principal, interest or in the payment or performance of any other obligation under the agreements, the Mortgagee shall have the right, but not the obligation, to pay the installment or installments and to pay or perform the other obligations on behalf of and at the expense of the Mortgagor. If the Mortgagee receives a written notice of the Mortgagor's default under the lease, land contract or other agreement, it may rely on that notice as cause to take any action it deems necessary or reasonable to cure a default even if the Mortgagor questions or denies the existence or nature of the default.

**11. SECURITY AGREEMENT:** This Mortgage also constitutes a security agreement within the meaning of the Illinois Uniform Commercial Code (the "UCC") and the Mortgagor grants to the Mortgagee a security interest in any Equipment and other personal property included within the definition of Premises. Accordingly, the Mortgagee shall have all of the rights and remedies available to a secured party under the UCC. Upon the occurrence of an event of default under this Mortgage, the Mortgagee shall have, in addition to the remedies provided by this Mortgage, the right to use any method of disposition of collateral authorized by the UCC with respect to any portion of the Premises subject to the UCC.

**12. REIMBURSEMENT OF ADVANCES:** If the Mortgagor fails to perform any of its obligations under this Mortgage, or if any action or proceeding is commenced which materially affects the Mortgagee's interest in the Premises (including but not limited to a lien priority dispute, eminent domain, code enforcement, insolvency, bankruptcy or probate proceedings), then the Mortgagee at its sole option may make appearances, disburse sums and take any action it deems necessary to protect its interest (including but not limited to disbursement of reasonable attorneys' and paralegals' fees and entry upon the Premises to make repairs). Any amounts disbursed shall become additional debt, shall be immediately due and payable upon notice from the Mortgagee to the Mortgagor, and shall bear interest at the higher rate permitted under any of the instruments evidencing any of the Debt.

**13. DUE ON TRANSFER:** If all or any part of the Premises or any interest in the Premises is transferred without the Mortgagee's prior written consent, it may, at its sole option, declare the Debt to be immediately due and payable.

**14. NO ADDITIONAL LIEN:** The Mortgagor covenants not to execute any mortgage, security agreement, assignment of leases and rentals or other agreement granting a lien against the interest of the Mortgagor in the Premises without the prior written consent of the Mortgagee, and then only when the document granting that lien expressly provides that it shall be subject to the lien of this Mortgage for the full amount secured by this Mortgage and shall also be subject and subordinate to all present and future leases affecting the Premises.

**15. EMINENT DOMAIN:** Notwithstanding any taking under the power of eminent domain, alteration of the grade of any road, alley, or the like, or other injury or damage to or decrease in value of the Premises by any public or quasi-public authority or corporation, the Mortgagor shall continue to pay the Debt in accordance with the terms of the underlying loan documents until any award or payment shall have been actually received by the Mortgagee. By executing this Mortgage, the Mortgagor assigns the entire proceeds of any award or payment and any interest to the Mortgagee. The proceeds shall be applied first toward reimbursement of all costs and expenses of the Mortgagee in collecting the proceeds, including reasonable attorneys' and paralegals' fees, and then toward payment of the Debt whether or not then due or payable, or the Mortgagee at its option may apply the proceeds, or any part to the alteration, restoration or rebuilding of the Premises.

**16. ENVIRONMENTAL PROVISIONS:** From time to time the Mortgagor has or will execute and deliver Environmental Certificates to the Mortgagee, which include representations, warranties, covenants, indemnifications and a right of entry. The most recent Environmental Certificate shall supercede all prior Environmental Certificates, and its provisions are incorporated into this Mortgage.

**17. EVENTS OF DEFAULT/ACCELERATION:** Upon the occurrence of any of the following, the Mortgagee shall be entitled to exercise its remedies under this Mortgage or as otherwise provided by law: (1) The Mortgagor or, if other than the Mortgagor or all of the undersigned, any principal obligor of the Debt (collectively, the "Borrower") fails to pay when due any amount payable under the note(s), the guaranty, or any other agreement evidencing the Debt, (2) the Mortgagor or Borrower (a) fails to observe or perform any other term of the note(s), the guaranty, or any other agreement evidencing the Debt or (b) makes

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any materially incorrect or misleading representation in any financial statement or other information delivered to the Mortgagee; (3) there is a default under the terms of this Mortgage, any loan agreement, mortgage, security agreement or other document executed as part of the Debt transaction, or any guaranty of the Debt becomes unenforceable in whole or in part, or any guarantor fails to promptly perform under its guaranty; (4) the Mortgagor or Borrower fails to pay when due any amount payable under any note or agreement evidencing debt to the Mortgagee, or defaults under the terms of any agreement or instrument relating to or securing any debt for borrowed money owing to the Mortgagee; (5) a "reportable event" (as defined in the Employee Retirement Income Security Act of 1974 as amended) occurs that would permit the Pension Benefit Guaranty Corporation to terminate any employee benefit plan of the Mortgagor or Borrower or any affiliate of the Mortgagor or Borrower; (6) the Mortgagor or Borrower becomes insolvent or unable to pay its debts as they become due; (7) the Mortgagor or Borrower (a) makes an assignment for the benefit of creditors, (b) consents to the appointment of a custodian, receiver, or trustee for itself or for a substantial part of its assets, or (c) commences any proceeding under any bankruptcy, reorganization, liquidation, insolvency or similar laws of any jurisdiction; (8) a custodian, receiver or trustee is appointed for the Mortgagor or Borrower or for a substantial part of its assets without its consent and is not removed within 60 days after the appointment; or the Mortgagor or Borrower consents to the appointment; (9) proceedings are commenced against the Mortgagor or Borrower under any bankruptcy, reorganization, liquidation, or similar laws of any jurisdiction, and they remain undismissed for 60 days after commencement; or the Mortgagor or Borrower consents to the commencement of those proceedings; (10) any judgment is entered against the Mortgagor or Borrower, or any attachment, levy, or garnishment is issued against any property of the Mortgagor or Borrower; (11) any proceedings are instituted for the foreclosure or collection of any mortgage, judgment or lien affecting the Premises; (12) the Mortgagor sells, transfers or hypothecates any part of the Premises except as provided in this Mortgage without the prior written consent of the Mortgagee; (13) the Mortgagor or Borrower dies; (14) the Mortgagor or Borrower, without the Mortgagee's written consent, (a) is dissolved, (b) merges or consolidates with any third party, (c) sells or otherwise conveys a material part of its assets or business outside the ordinary course of its business, (d) leases, purchases or otherwise acquires a material part of the assets of any business entity outside the ordinary course of its business, or (e) agrees to do any of the foregoing; (15) there is a substantial change in the existing or prospective financial condition of the Mortgagor or Borrower which the Mortgagee in good faith determines to be materially adverse; (16) The Borrower and/or Guarantor falls to enter into or defaults under the terms and obligations of that certain Authorization for Debtors Guarantees 504 Program Loan No. CDC-S 949 888 30 02 SPR; (SEE EXHIBIT A ATTACHED)

**18. REMEDIES ON DEFAULT:** Upon the occurrence of any event of default, the Mortgagee may exercise all of the rights, powers and remedies expressly or impliedly conferred on or reserved to it under this Mortgage or any other related document, or now or later existing at law or in equity, including without limitation the following: (i) declare the Debt to be immediately due, (ii) proceed at law or in equity to collect the Debt and proceed to foreclose this Mortgage, or otherwise pursue any of its rights or remedies, and (iii) exercise any of its rights, powers or remedies pursuant to the UCC.

The Mortgagee in any suit to foreclose this Mortgage shall be entitled to the appointment of a receiver of the rents, leases and profits of the Premises as a matter of right and without notice (without regard to the value of the Premises), and the Mortgagor specifically consents to that appointment without notice. The Premises may be sold in one parcel as an entirety or in such parcels, manner and order as the Mortgagee may elect. By executing this Mortgage, the Mortgagor waives, in the event of a foreclosure of this Mortgage or the enforcement by the Mortgagee of any other rights and remedies in this Mortgage, any right otherwise available in respect to marshalling of assets which secure the Debt or to require the Mortgagee to pursue its remedies against any other such assets. The Mortgagor waives all errors and imperfections in any proceedings instituted by the Mortgagee to enforce any of its rights and remedies.

**19. PLEDGE:** If the Mortgagor is not liable for all or any part of the Borrower's obligation to the Mortgagee, then it agrees that: (a) If any monies become available to the Mortgagee from the Borrower that it can apply to any debt, the Bank may apply them to debt not secured by this Mortgage. (b) Without notice to or the consent of the Mortgagor, the Mortgagee may (i) take any action it chooses against any Borrower, against any collateral for the Debt, or against any other person liable for the Debt; (ii) release any Borrower or any other person liable for the Debt, release any collateral for the Debt, and neglect to perfect any interest in any collateral; (iii) forbear or agree to forbear from exercising any rights or remedies, including any right of setoff, that it has against the Borrower, any other person liable for the Debt, or any other collateral for the Debt; (iv) extend to any Borrower additional Debt to be secured by this Mortgage; or (v) renew, extend, modify or amend any Debt, and deal with any Borrower or any other person liable for the Debt as it chooses. (c) None of the Mortgagor's obligations under this Mortgage are affected by (i) any act or omission of the Mortgagee; (ii) the voluntary or involuntary liquidation, sale or other disposition of all or substantially all of the assets of any Borrower; (iii) any receivership, insolvency, bankruptcy, reorganization or other similar proceedings affecting any Borrower or any of its assets; or (iv) any change in the composition or structure of any Borrower or any Mortgagor, including a merger or consolidation with any other entity. (e) The Mortgagor's rights under this section and this Mortgage are unconditional and absolute, even if all or any part of any agreement between the Borrower and the Mortgagor is unenforceable, voidable, void or illegal, and regardless of the existence of any defense, setoff or counterclaim that a Borrower may be able to assert against the Mortgagor. (e) It waives all rights of subrogation, contribution, reimbursement, indemnity, exoneration, implied

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contract, recourse to security, and any other claim (as that term is defined in the federal Bankruptcy Code, as amended from time to time) that it may have or acquire in the future against any Borrower, any other person liable for the Debt, or any collateral for the Debt, because of the existence of this Mortgage, the Borrower's performance under this Mortgage, or the Mortgagor's availing itself of any rights or remedies under this Mortgage. (f) If any payment to the Mortgagor on any of the Debt is wholly or partially invalidated, set aside, declared fraudulent or required to be repaid to the Borrower or anyone representing the Borrower or the Borrower's creditors under any bankruptcy or insolvency act or code, under any state or federal law, or under common law or equitable principles, then this Mortgage shall remain in full force and effect or be reinstated, as the case may be, until payment in full to the Bank of the repaid amounts, and of the Debt. If this Mortgage must be reinstated, the Mortgagor agrees to execute and deliver to the Mortgagor new mortgages, if necessary, in form and substance acceptable to the Mortgagor, covering the Premises.

**20. REPRESENTATIONS BY MORTGAGOR:** Each Mortgagor represents that: (a) the execution and delivery of this Mortgage and the performance of the obligations it imposes do not violate any law, conflict with any agreement by which it is bound, or require the consent or approval of any governmental authority or any third party; (b) this Mortgage is a valid and binding agreement enforceable according to its terms; and (c) any balance sheets, profit and loss statements, and other financial statements furnished to the Mortgagor are accurate and fairly reflect the financial condition of the organizations and persons to which they apply on their effective dates including contingent liabilities of every type, which financial condition has not changed materially and adversely since those dates. Each Mortgagor, other than a natural person, further represents that: (a) it is duly organized, existing and in good standing pursuant to the laws under which it is organized; and (b) the execution and delivery of this Mortgage and the performance of the obligations it imposes (i) are within its powers and have been duly authorized by all necessary action of its governing body; and (ii) do not contravene the terms of its articles of incorporation or organization, its by-laws, or any partnership, operating or other agreement governing its affairs.

**21. NOTICES:** Notice from one party to another relating to this Mortgage shall be deemed effective if made in writing (including telecommunications) and delivered to the recipient's address, telex number or telecopier number set forth above by any of the following means: (a) hand delivery, (b) registered or certified mail, postage prepaid, with return receipt requested, (c) first class or express mail, postage prepaid, (d) Federal Express, Purolator Courier or like overnight courier service, or (e) telecopy, telex or other wire transmission with request for assurance of receipt in a manner typical with respect to communications of that type. Notice made in accordance with this paragraph shall be deemed delivered upon receipt if delivered by hand or wire transmission, 3 business days after mailing if mailed by first class registered or certified mail or one business day after mailing or deposit with an overnight courier service if delivered by express mail or overnight courier. This notice provision shall be inapplicable to any judicial or non-judicial proceeding where state law governs the manner and timing of notices in foreclosure or receivership proceedings.

**22. MISCELLANEOUS:** If any provision of this Mortgage is in conflict with any statute or rule of law or is otherwise unenforceable for any reason whatsoever, then that provision is void to the extent of the conflict or unenforceability, and severed from but does not invalidate any other provision of this Mortgage. No waiver by the Mortgagor of any right or remedy granted or failure to insist on strict performance by the Mortgagor, waives any right or remedy of the Mortgagee, nor does the subsequent exercise of the same right or remedy by the Mortgagee for any subsequent default by the Mortgagor, and all rights and remedies of the Mortgagee are cumulative.

These promises and agreements bind and these rights benefit the parties and their respective successors, and assigns. If there is more than one Mortgagor, the obligations under this Mortgage are joint and several.

This Mortgage is governed by Illinois law except to the extent it is preempted by Federal law or regulations.

**23. WAIVER OF HOMESTEAD RIGHT:** The Mortgagor expressly waives all rights and benefits under and by virtue of the Homestead Exemption Laws of the State of Illinois. The Mortgagor expressly waives any and all rights in respect to marshalling of assets which secure the Debt or to require the Mortgagee to pursue its remedies against any other assets.

**24. WAIVER OF RIGHT OF REDEMPTION:** EXCEPT AS MAY OTHERWISE BE PROHIBITED OR IN THE EVENT THE PREMISES ARE AND CONTINUE TO QUALIFY AS RESIDENTIAL PROPERTY AS DEFINED BY THE LAWS OF ILLINOIS REGARDING FORECLOSURE OF MORTGAGES, THE MORTGAGOR WAIVES ANY AND ALL RIGHTS OF REDEMPTION FROM SALE UNDER ANY ORDER OR JUDGMENT OF FORECLOSURE OF THIS MORTGAGE AND ANY RIGHTS OF REINSTATEMENT PURSUANT TO THE LAWS OF THE STATE OF ILLINOIS REGARDING FORECLOSURE OF MORTGAGES, ON ITS OWN BEHALF AND ON BEHALF OF EACH AND EVERY PERSON, EXCEPT JUDGMENT CREDITORS OF THE MORTGAGOR, ACQUIRING ANY INTEREST IN OR TITLE TO THE PREMISES AS OF OR SUBSEQUENT TO THE DATE OF THIS MORTGAGE.

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This instrument is executed by the undersigned Land Trustee, not personally but solely as Trustee in the exercise of the power and authority conferred upon and vested in it as such Trustee. It is expressly understood and agreed that all of the warranties, indemnities, representations, covenants, undertakings and agreements herein made on the part of the Trustee are undertaken by it solely in its capacity as Trustee and not personally. It is further understood and agreed that the Trustee merely holds title to the property herein described and has no agents, employees or control over the management of the property and no knowledge of other factual matters except as represented to it by the beneficiary(ies) of the Trust. No personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against the Trustee on account of any warranty, indemnity, representation, covenant, undertaking or agreement of the Trustee in this instrument, all such liability being expressly waived by every person now or hereafter claiming any right or security hereunder; and the owner of any indebtedness or cause of action for breach of any warranty, indemnity, representation, covenant, undertaking or agreement accruing hereunder shall look solely to the Trust estate for the payment thereof.

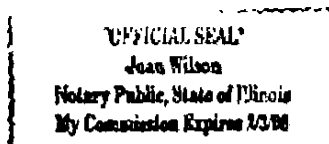
IN WITNESS WHEREOF, American National Bank and Trust Company of Chicago, as Successor Trustee to NBD Bank, not personally but as Trustee as aforesaid, has caused these presents to be signed by one of its Officers the day and year first above written.

AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO  
as Successor Trustee to NBD BANK  
as Trustee, as aforesaid, and not personally,

By Annette N. Brusca  
Assistant Vice President

STATE OF ILLINOIS )  
COUNTY OF COOK )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify ANNETTE N. BRUSCA an officer of American National Bank and Trust Company of Chicago 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 acknowledged that said officer of said association signed and delivered this instrument as a free and voluntary act, for the uses and purposes therein set forth.  
GIVEN under my hand and seal this <sup>12th</sup> day of October, 1996.



Joan Wilson  
Notary Public

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25. WAIVER OF JURY TRIAL: THE MORTGAGEE AND THE MORTGAGOR, AFTER CONSULTING OR HAVING HAD THE OPPORTUNITY TO CONSULT WITH COUNSEL, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT EITHER OF THEM MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION BASED ON OR ARISING OUT OF THIS MORTGAGE OR ANY RELATED INSTRUMENT OR AGREEMENT, OR ANY OF THE TRANSACTIONS CONTEMPLATED BY THIS MORTGAGE, OR ANY COURSE OF CONDUCT, DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN), OR ACTIONS OF EITHER OF THEM. NEITHER THE MORTGAGEE NOR THE MORTGAGOR SHALL SEEK TO CONSOLIDATE, BY COUNTERCLAIM OR OTHERWISE, ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED. THESE PROVISIONS SHALL NOT BE DEEMED TO HAVE BEEN MODIFIED IN ANY RESPECT OR RELINQUISHED BY EITHER THE MORTGAGEE OR THE MORTGAGOR EXCEPT BY A WRITTEN INSTRUMENT EXECUTED BY BOTH OF THEM.

Property of Cook County Clerk's Office

Amort National Bank and Trust Company of Chicago as Successor Trustee to  
BHD Bank

Not personally, but as Trustee under a Trust Agreement dated  
November 15, 1943, and known as Trust Agreement

By: Authorized Signatory  
By: Authorized Signatory

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State of Illinois

County of \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public in and for said County and State, certify that \_\_\_\_\_ is personally known to me to be the same person(s) whose name(s) \_\_\_\_\_ subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that \_\_\_\_\_ signed and delivered the said instrument as his/her free and voluntary act, for the uses and purposes set forth in the instrument.

Given under my hand and notarial seal on \_\_\_\_\_, 19\_\_\_\_\_.

My Commission Expires: \_\_\_\_\_, Notary Public

State of Illinois

County of \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public in and for said County and State, certify that \_\_\_\_\_ of \_\_\_\_\_ a(n) \_\_\_\_\_ (corporation)(association) and \_\_\_\_\_ of said (corporation)(association) personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such \_\_\_\_\_ and \_\_\_\_\_, respectively, appeared before me this day in person, and acknowledged that they signed and delivered the said instrument as their own free and voluntary act, and as the free and voluntary act of said (corporation)(association) as Trustees, for the uses and purposes therein set forth; and the said \_\_\_\_\_ did also then and there acknowledge that \_\_\_\_\_ he, as custodian of the corporation seal of said (corporation)(association), affixed the said corporate seal of said (corporation)(association) to said instrument as his/her own free and voluntary act, and as the free and voluntary act of said (corporation)(association), as Trustee, for the uses and purposes set forth in the instrument.

Given under my hand and notarial seal this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_.

My Commission Expires: \_\_\_\_\_, Notary Public

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## EXHIBIT A

### LEGAL

THAT PART OF LOT A IN REESE'S ADDITION TO MOUNT PROSPECT, A SUBDIVISION OF PART OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 35, TOWNSHIP 42 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF LOT A; THENCE WEST ON THE SOUTH LINE OF LOT A, A DISTANCE OF 594.07 FEET TO THE POINT OF BEGINNING; THENCE NORTHERLY, PERPENDICULAR TO SAID SOUTH LINE OF SAID LOT A, A DISTANCE OF 120 FEET; THENCE SOUTHWESTERLY ON A LINE PERPENDICULAR TO THE WESTERLY LINE OF LOT A, A DISTANCE 221.81 FEET TO SAID WESTERLY LINE THENCE SOUTHEASTERLY ON SAID WESTERLY LINE 10 FEET TO THE SOUTHWEST CORNER OF LOT A; THENCE EAST ON THE SOUTH LINE OF LOT A, A DISTANCE OF 186.81 FEET TO THE POINT OF BEGINNING.

(17) The Borrower fails to obtain funding pursuant to that certain Authorization for Debenture Guarantee 504 Program Loan No. CDC-S 949 888 30 02 SPR within sixty (60) days from the "Completion Date", as that term is defined in that certain Construction Loan Agreement dated ~~at 10/15/97~~ by and between James Cook, individually and general partners, Dolores Fenger, individually and general partner and Clarence Fenger, individually and general partner DBA Cook-Fenger Partnership, a general partnership and Cofen, Inc. and Mortgagee; (18) The Borrower and/or Guarantor fails to enter into that certain Authorization and Loan Agreement No. CLP-GP 949711 30 03 SPR; (19) The Borrower and/or Guarantor defaults under the terms and conditions of that certain Authorization and Loan Agreement No. CLP-GP 949711 30 03 SPR; (20) The Borrower fails to obtain funding pursuant to that certain Authorization and Loan Agreement No. CLP-GP 949711 30 03 SPR on or prior to February 29, 1997

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