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This Instrument Was Prepared By  
And After Recording Should Be Mailed To:

7559245 7P1-DZ

Vance L. Liebman, Esq.  
LEVIN & FUNKHOUSER, LTD.  
55 West Monroe Street  
Suite 2410  
Chicago, Illinois 60603  
(312) 701-5800

DEPT-01 RECORDING \$37.00  
T#0012 TRAN 2650 10/24/96 12:58:00  
#6811 CG #--96-811759  
COOK COUNTY RECORDER

## SECOND MORTGAGE

31

THIS INDENTURE, made as of the 15th day of October, 1996, between Phillip O'Brien and Lynn Florsheim O'Brien, husband and wife, having an address of 400 E. Ohio Street, Apt. 2301, Chicago, IL 60611, jointly and severally (collectively, herein referred to as "Mortgagor"), and Trustees Mortgage Services, having a mailing address of 55 W. Monroe Street, Suite 2410, Chicago, IL 60603 (hereinafter referred to as "Mortgagee").

## WITNESSETH:

THAT, WHEREAS, the Mortgagor is justly indebted to the Mortgagee upon that certain promissory note of even date herewith payable to the order of and delivered to Mortgagee in the aggregate principal sum of One Million and No/100THS DOLLARS (\$1,000,000.00), in and by which note the Mortgagor promises to pay the said principal sum and interest at the rate and in installments as provided in said note with final payment of the balance due as of December 31, 1997, or as extended under the terms of the note, and all of said principal and interest are made

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**BOX 333-CTI**

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payable at such place as the holders of the note may, from time to time, in writing appoint (said note being herein referred to as the "Note").

**NOW, THEREFORE**, the Mortgagor to secure the payment of said principal sum of money and said interest in accordance with the terms, provisions and limitations of this Mortgage, and the performance of the covenants and agreements herein contained, by the Mortgagor to be performed, and also in consideration of the sum of Ten and No/100THS DOLLARS (\$10.00) in hand paid, the receipt whereof is hereby acknowledged does by these presents **CONVEY** and **WARRANT** unto the Mortgagee, and the Mortgagee's successors and assigns, the following described Real Estate located at 1912 N. Burling, Chicago, IL 60614, and all of its estate, right, title and interest therein, situate, lying and being in the County of Cook and State of Illinois and legally described on **Exhibit A** attached hereto and by this reference made a part hereof, which, together with all improvements, tenements, easements, fixtures, and appurtenances thereto belonging, and all rents, issues and profit thereof for so long and during all such times as Mortgagor may be entitled thereto is referred to herein as the "Premises."

**THIS IS A SECOND MORTGAGE SECURING A PROMISSORY NOTE WITH A VARIABLE INTEREST RATE.**

**This Second Mortgage is subject only to that certain Trust Deed dated June 14, 1995 and recorded with the Cook County Recorder of Deeds on June 21, 1995 as Document No. 95-401446.**

**TO HAVE AND TO HOLD** the Premises unto the Mortgagee, and the Mortgagee's successors and assigns, forever, for the purposes, and upon the uses herein set forth.

1. Mortgagor shall keep Premises in good condition and repair, without waste, and free from mechanics or other liens or claims for lien not subordinate to the lien hereof and pay when due any indebtedness which may be secured by a lien or charge on the Premises superior to the lien

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hereof and upon request, exhibit satisfactory evidence of the discharge of such prior lien to the Mortgagee.

2. Mortgagor shall pay before any penalty attaches all general taxes and assessments, and shall pay special taxes, special assessments, water charges, sewer service charges, and other charges against the Premises when due, and shall upon written request, furnish to the Mortgagee duplicate receipts therefor.

3. The Mortgagor shall have such privilege of making prepayments on the principal of said Note (in addition, to the required payments) as is provided in said Note.

4a. In case of default herein, Mortgagee may, upon ten (10) days notice to Mortgagor, but need not, make any payment or perform any act hereinbefore required of Mortgagor in any form and manner deemed expedient, and may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting said Premises or contest any tax or assessment. All moneys paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith and any other moneys advanced by Mortgagee to protect the Premises and the lien hereof, shall be so much additional indebtedness secured hereby and shall become immediately due and payable with interest thereon at the rate of interest provided for in the Note. Inaction of Mortgagee shall not be considered as a waiver of any right accruing to the Mortgagee on account of any default hereunder on the part of the Mortgagor.

4b. The Mortgagee making any payment hereby authorized relating to taxes or assessments, may do so according to any bill, statement or estimate procured from the appropriate

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public office or condominium association without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof.

5. Mortgagor shall pay each item of indebtedness herein mentioned, both principal and interest, when due according to the terms hereof. At the option of the Mortgagee all unpaid indebtedness secured by this Mortgage shall, notwithstanding anything in the Note or in this Mortgage to the contrary, become due and payable when either of the following Events of Default shall have occurred:

a. Default shall occur in the payment when due of any installment under the Note, and such installment shall remain unpaid after a date specified by written notice to Mortgagor, the date so specified to be not less than ten (10) days from the date such notice is mailed; or

b. Default shall occur and continue for thirty (30) days after written notice thereof, in the performance of any other agreement of the Mortgagor herein contained, provided, however, that if any such default cannot be cured by Mortgagor within such thirty (30)-day period, no Event of Default shall have occurred if Mortgagor commences within said period to cure such default and diligently pursues such cure.

6. When the indebtedness hereby secured shall become due whether by acceleration or otherwise, Mortgagee shall have the right to foreclose the lien hereof. In any suit to foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the decree for sale all reasonable expenditures and expenses which may be reasonably paid or incurred by or on behalf of

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Mortgagee as may be reasonably necessary to prosecute such suit. All reasonable expenditures and expenses of the nature in this Paragraph 6 mentioned shall become so much additional indebtedness secured hereby and immediately due and payable, with interest thereon at the rate of interest provided for in the Note when paid or incurred by Mortgagee in connection with (a) any proceeding to which the Mortgagee shall be a party, either as plaintiff, claimant or defendant, by reason of this Mortgage or any indebtedness hereby secured; or (b) for any suit for the foreclosure hereof after accrual of such right to foreclose.

7. The proceeds of any foreclosure sale of the Premises shall be distributed and applied in the following order of priority; first, on account of all costs and expenses incident to the foreclosure proceedings; second, all other items which under the terms hereof constitute secured indebtedness additional to that evidenced by the Note, with interest thereon as herein provided; third, all principal and interest remaining unpaid on the Note; fourth, any surplus to Mortgagor, its successors or assigns, as their rights may appear.

8. Upon or at any time after the filing of a complaint to foreclose this Mortgage, the Court in which such complaint is filed may appoint a receiver of said Premises. Such receiver shall have power to collect the rents, issues and profits of said Premises during the pendency of such foreclosure suit as well as during any further times when Mortgagor, except for the intervention of such receiver, would be entitled to collect such rents, issues and profits, and all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during the whole of said period. 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 secured hereby, or by any decree foreclosing this Mortgage, or any tax, special

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assessment or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to foreclosure sale; and (b) the deficiency in case of a sale and deficiency.

9. Mortgagee shall release this Mortgage and lien thereof by proper instrument upon payment and discharge of all indebtedness secured hereby. Recording costs for any such instruments shall be borne by Mortgagor.

10. In order to induce Mortgagee to make the loan secured by this Mortgage, the Mortgagor agrees not to sell, encumber, lease or convey, or otherwise dispose of all or any part of the Premises without prior written consent of the Mortgagee or refinance the repayments of the indebtedness secured by this Mortgage without the prior written consent of the Mortgagee, not to be unreasonably withheld, and that if the Premises, or any part thereof, or interest, legal or equitable, therein is sold, assigned, transferred, leased, conveyed or otherwise alienated by the Mortgagor, or an option granted for any such interest in either or any case without the prior written consent of the Mortgagee, the Mortgagee, at its option, may declare the then full outstanding principal balance of the indebtedness under the Note to be forthwith due and payable. Any change in the legal or equitable title to the Premises or in the beneficial interest in the land trust holding title to the Premises without the prior written consent of the Mortgagee, whether or not of record and whether or not for consideration or sale or other disposition of any interest in the Mortgagor, shall be deemed a transfer of an interest in the Premises in violation of this Section.

11. This Mortgage and all provisions hereof shall extend to and be binding upon Mortgagor and all persons claiming under or through Mortgagor and the word "Mortgagor" when used herein shall include all such persons and all persons liable for the payment of the indebtedness

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assessment or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to foreclosure sale; and (b) the deficiency in case of a sale and deficiency.

9. Mortgagee shall release this Mortgage and lien thereof by proper instrument upon payment and discharge of all indebtedness secured hereby. Recording costs for any such instruments shall be borne by Mortgagor.

10. In order to induce Mortgagee to make the loan secured by this Mortgage, the Mortgagor agrees not to sell, encumber, lease or convey, or otherwise dispose of all or any part of the Premises without prior written consent of the Mortgagee or refinance the repayments of the indebtedness secured by this Mortgage without the prior written consent of the Mortgagee, not to be unreasonably withheld, and that if the Premises, or any part thereof, or interest, legal or equitable, therein is sold, assigned, transferred, leased, conveyed or otherwise alienated by the Mortgagor, or an option granted for any such interest in either or any case without the prior written consent of the Mortgagee, the Mortgagee, at its option, may declare the then full outstanding principal balance of the indebtedness under the Note to be forthwith due and payable. Any change in the legal or equitable title to the Premises or in the beneficial interest in the land trust holding title to the Premises without the prior written consent of the Mortgagee, whether or not of record and whether or not for consideration or sale or other disposition of any interest in the Mortgagor, shall be deemed a transfer of an interest in the Premises in violation of this Section.

11. This Mortgage and all provisions hereof shall extend to and be binding upon Mortgagor and all persons claiming under or through Mortgagor and the word "Mortgagor" when used herein shall include all such persons and all persons liable for the payment of the indebtedness

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or any part thereof, whether or not such persons shall have executed the note or this Mortgage. The word "Mortgagee" when used herein shall include the successors and assigns of the Mortgagee named herein and the holder or holders, from time to time, of the note secured hereby.

12. Notwithstanding anything contained herein to the contrary, the Mortgagor may contest the validity and/or amount of any lien, encumbrance, general tax, special tax, special assessment, water charge, sewer charge, mechanics or materialman's lien or any other charge against the Premises, without first paying such charge, provided that such contest is diligently pursued.

13. Any notice or other communication with respect to this Mortgage shall be in writing and shall be deemed to have been given when delivered personally or when deposited in the United States mail, registered or certified, return receipt requested, and with proper postage prepaid addressed as follows:

**If to Mortgagor:** Phillip O'Brien and  
Lynn Florsheim O'Brien

**If to Mortgagee:** Trustees Mortgage Services  
Attn: Vance L. Liebman, Esq.  
Levin & Funkhouser, Ltd.  
55 West Monroe Street, Suite 2410  
Chicago, Illinois 60603

or such other address as either party may specify for himself, herself or itself by written notice as provided herein.

14. Whenever possible, each provision of this Mortgage shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Mortgage or the application thereof to any party or circumstance shall be prohibited by or invalid under

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applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision to other parties or circumstances.

15. This Mortgage is being executed and delivered in the State of Illinois, and the validity, construction and enforceability of this Mortgage shall be governed in all respects by the laws of the State of Illinois.

IN WITNESS WHEREOF, the undersigned have executed this Mortgage as of the first date written above.

MORTGATOR

Lynn Florsheim O'Brien (SEAL)  
Lynn Florsheim O'Brien

Phillip O'Brien (SEAL)  
Phillip O'Brien

STATE OF ILLINOIS )  
  )  
COUNTY OF COOK     )

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY that Phillip O'Brien and Lynn Florsheim O'Brien, husband and wife, are personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 21st day of October, 1996.

My Commission Expires:

Margaret S. Troy  
Notary Public

July 24, 1999

"OFFICIAL SEAL"  
MARGARET S. TROY  
Notary Public, State of Illinois  
My Commission Expires July 24, 1999

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## EXHIBIT "A"

### (LEGAL DESCRIPTION)

THE WEST 131 FEET OF THE EAST 164 FEET OF LOT 23 IN THE SUBDIVISION OF THE WEST 1/2 OF LOTS 20 TO 24, IN BLOCK 2 OF SHEFFIELDS ADDITION TO CHICAGO, IN SECTIONS 29, 31, 32 AND 33, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Commonly known as: 1912 North Burling, Chicago, IL 60614

Permanent Index Number: 14-33-300-056-0000

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