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This document was prepared by:
STATE BANK OF COUNTRYSIDE
6734 Joliet Road
Countryside, Illinois 60525

96338703

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47796 \$ 1.00 # 96-3537135
COOK COUNTY RECORDER

(Space above this line for recording purposes)

REAL ESTATE MORTGAGE To Secure a Construction Loan From STATE BANK OF COUNTRYSIDE

31
76 04 613L 10/2

1. DATE AND PARTIES. The date of this Real Estate Mortgage (Mortgage) is April 5, 1996, and the parties and their mailing addresses are the following:

MORTGAGOR:

JERRY KENNELLY
5874 NORTH VINE STREET
NORWOOD PARK, ILLINOIS 60631
Social Security # 320-68-2900
AN UNMARRIED PERSON

PATRICK MCINERNEY
7001 NORTH OTTAWA
CHICAGO, IL 60631
Social Security # 330-69-7812
A MARRIED PERSON

BANK:

STATE BANK OF COUNTRYSIDE
an ILLINOIS banking corporation
6734 Joliet Road
Countryside, Illinois 60525
Tax I.D. # 36-2814450
(as Mortgagee)

2. MAXIMUM OBLIGATION LIMIT. The total principal amount of the Obligations secured by this Mortgage, not including, however, any sums advanced for the protection of the Property or Bank's interest therein, nor interest, attorney's fees, paralegal fees, costs and other legal expenses, shall not exceed the sum of \$275,000.00, provided, however, that nothing contained herein shall constitute a commitment to make additional or future loans or advances in any amounts.

3. OBLIGATIONS DEFINED. The term "Obligations" is defined as and includes the following:

- A. A promissory note, No. _____, (Note) dated April 5, 1996, with a maturity date of October 5, 1996, and executed by JERRY KENNELLY and PATRICK MCINERNEY (Borrower) payable to the order of Bank, which evidences a loan (Loan) to Borrower in the amount of \$275,000.00, plus interest, and all extensions, renewals, modifications or substitutions thereof.
- B. All future advances by Bank to Borrower, to Mortgagee, to any one of them or to any one of them and others (and all other obligations referred to in the subparagraph(s) below, whether or not this Mortgage is specifically referred to in the evidence of indebtedness with regard to such future and additional indebtedness).
- C. All additional sums advanced, and expenses incurred, by Bank for the purpose of insuring, preserving or otherwise protecting the Property (as herein defined) and its value, and any other sums advanced, and expenses incurred by Bank pursuant to this Mortgage, plus interest at the same rate provided for in the Note computed on a simple interest method.
- D. All other obligations, now existing or hereafter arising, by Borrower owing to Bank to the extent the taking of the Property (as herein defined) as security therefor is not prohibited by law, including but not limited to liabilities for overdrafts, all advances made by Bank on Borrower's, and/or Mortgagee's, behalf as authorized by this Mortgage and liabilities as guarantor, endorser or surety, of Borrower to Bank, due or to become due, direct or indirect, absolute or contingent, primary or secondary, liquidated or unliquidated, or joint, several, or joint and several.
- E. Borrower's performance of the terms in the Note or Loan, Mortgagee's performance of any terms in this Mortgage, and Borrower's and Mortgagee's performance of any terms in any deed of trust, any trust deed, any trust indenture, any other

BOX 333-CTI

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mortgage, any deed to secure debt, any security agreement, any assignment, any construction loan agreement, any loan agreement, any assignment of beneficial interest, any guaranty agreement or any other agreement which secures, guarantees or otherwise relates to the Note or Loan.

However, this Mortgage will not secure another debt:

- A. If this Mortgage is in Borrower's principal dwelling and Bank fails to provide (to all persons entitled) any notice of right of rescission required by law for such other debt; or
 - B. If Bank fails to make any disclosure of the existence of this Mortgage required by law for such other debt.
4. **CONVEYANCE.** In consideration of the Loan and Obligations, and to secure the Obligations (which includes the Note according to its specific terms and the obligations in this Mortgage), Mortgagor hereby bargains, grants, mortgages, sells, conveys and warrants to Bank, as Mortgagee, the following described property (Property) situated in COOK County, ILLINOIS, to-wit:

LOT 14 IN SUBDIVISION OF BLOCK 12 IN CANAL TRUSTEES SUBDIVISION OF THE NORTHWEST 1/4 OF SECTION 7, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS P.L.N. 17-07-112-011-0000

The Property may be commonly referred to as 2033 WEST HURON, CHICAGO, ILLINOIS

such property not constituting the homestead of Borrower, together with all buildings, improvements, fixtures and equipment now or hereafter attached to the Property, including, but not limited to, all heating, air conditioning, ventilation, plumbing, cooling, electrical and lighting fixtures and equipment; all landscaping; all exterior and interior improvements; all easements, leases, rights, appurtenances, rents, royalties, oil and gas rights, privileges, proceeds, profits, other minerals, water, water rights, and water stock, crops, grass and timber at any time growing upon said land, including replacements and additions thereto, all of which shall be deemed to be and remain a part of the Property. The term "Property" further includes, but is not limited to, any and all wells, water, water rights, ditches, laterals, reservoirs, reservoir sites and dams, used, appurtenant, connected with, or attached to the Property, whether or not evidenced by stock or shares in a corporation, association or other entity howsoever evidenced. All of the foregoing Property shall be collectively hereinafter referred to as the Property. To have and to hold the Property, together with the rights, privileges and appurtenances thereto belonging, unto Bank forever to secure the Obligations. Mortgagor does hereby warrant and defend the Property unto Bank forever, against any claim or claims, of all persons claiming or to claim the Property or any part thereof. Mortgagor further releases and waives all rights under and by virtue of the homestead laws and exemption laws of the state of ILLINOIS.

5. **LIENS AND ENCUMBRANCES.** Mortgagor warrants and represents that the Property is free and clear of all liens and encumbrances whatsoever. Mortgagor agrees to pay all claims when due that might result, if unpaid, in the foreclosure, execution or impoundment of any lien, claim or encumbrance on or against the Property or any part thereof. Mortgagor may in good faith contest any such lien, claim or encumbrance by posting any bond in an amount necessary to prevent such claim from becoming a lien, claim or encumbrance or to prevent its foreclosure or execution.
6. **CONSTRUCTION LOAN.** This is a construction loan in that the Obligations secured by this Mortgage are incurred in whole or in part for the construction of an improvement of land. Mortgagor acknowledges and agrees that Bank is not trustee for the benefit of the contractor, subcontractor or materialman and that such contractor, subcontractor or materialman do not have equitable liens on the loan proceeds and that they do not have third-party beneficiary status to any of the loan proceeds.
7. **EVENTS OF DEFAULT.** Mortgagor shall be in default upon the occurrence of any of the following events, circumstances or conditions (Events of Default):
 - A. Failure by any party obligated on the Obligations to make payment when due; or
 - B. A default or breach by Borrower, Mortgagor or any co-signer, endorser, surety, or guarantor under any of the terms of this Mortgage, the Note, any construction loan agreement or other loan agreement, any security agreement, mortgage, deed to secure debt, deed of trust, trust deed, or any other document or instrument evidencing, guaranteeing, securing or otherwise relating to the Obligations; or
 - C. The making or furnishing of any verbal or written representation, statement or warranty to Bank which is or becomes false or incorrect in any material respect by or on behalf of Mortgagor, Borrower, or any one of them, or any co-signer, endorser, surety or guarantor of the Obligations; or
 - D. Failure to obtain or maintain the insurance coverages required by Bank, or insurance as to customary and proper for the Property (as herein defined); or
 - E. The death, dissolution or insolvency of, the appointment of a receiver by or on behalf of, the assignment for the benefit of creditors by or on behalf of, the voluntary or involuntary termination of existence by, or the commencement of any proceeding under any present or future federal or state insolvency, bankruptcy, reorganization, composition or debtor relief law by or against Mortgagor, Borrower, or any one of them, or any co-signer, endorser, surety or guarantor of the Obligations; or
 - F. A good faith belief by Bank at any time that Bank is insecure with respect to Borrower, or any co-signer, endorser, surety or guarantor, that the prospect of any payment is impaired or that the Property (as herein defined) is impaired; or
 - G. Failure to pay or provide proof of payment of any tax, assessment, rent, insurance premium, accretion or accretion deficiency on or before its due date; or
 - H. A material adverse change in Mortgagor's business, including ownership, management, and financial conditions, which in Bank's opinion, impairs the Property or repayment of the Obligations; or
 - I. A transfer of a substantial part of Mortgagor's money or property; or
 - J. If all or any part of the Property or any interest therein is sold, leased or transferred by Mortgagor except as permitted in the paragraph below entitled "DUE ON SALE OR ENCUMBRANCE".

8. **REMEDIES ON DEFAULT.** At the option of Bank, all or any part of the principal of, and accrued interest on, the Obligations shall become immediately due and payable without notice or demand, upon the occurrence of an Event of Default or at any time thereafter. In addition, upon the occurrence of any Event of Default, Bank, at its option, may immediately commence foreclosure proceedings and may

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immediately invoke any or all other remedies provided in the Note, this Mortgage or related documents. Bank is entitled to all rights and remedies provided at law or equity whether or not expressly stated in this Mortgage. By choosing any remedy, Bank does not waive its right to an immediate use of any other remedy if the event of default continues or occurs again.

9. **DUE ON SALE OR ENCUMBRANCE.** Bank may, at Bank's option, declare the entire balance with all accrued interest on the Obligations to be immediately due and payable upon the contract for, or creation of, any lien, encumbrance, transfer or sale of the Property, or any portion thereof, by Mortgagor. Lapse of time or the acceptance of payments by Bank after such creation of any lien, encumbrance, transfer or sale, or contract for any of the foregoing, shall not be deemed a waiver or setback of Bank's right to accelerate the Obligations. If Bank exercises such option to accelerate, Bank shall mail, by certified mail or otherwise, Mortgagor notice of acceleration to the address of Mortgagor shown on Bank's records; the notice shall provide for a period of not less than 30 days from the date the notice is mailed within which Mortgagor shall pay the sums declared due. If Mortgagor fails to pay such sums prior to the expiration of such period, Bank may, without further notice or demand on Mortgagor, invoke any remedies permitted on Default. This covenant shall run with the Property and shall remain in effect until the Obligations and this Mortgage are fully paid.

In the preceding paragraph, the phrase "transfer or sale" includes the conveyance of any right, title or interest in the Property, whether voluntary or involuntary, by outright sale, deed, installment contract sale, land contract, contract for deed, leasehold interest with a term greater than three years, lease-option contract or any other method of conveyance of the Property interests; the term "interest" includes, whether legal or equitable, any right, title, interest, lien, claim, encumbrance or proprietary right, choate or inchoate, any of which is superior to the lien created by this Mortgage.

10. **POSSESSION ON FORECLOSURE.** If an action is brought to foreclose this Mortgage for all or any part of the Obligations, Mortgagor agrees that the Bank shall be entitled to immediate possession as Mortgagor in possession of the Property to the extent not prohibited by law, or the court may appoint, and Mortgagor hereby consents to such appointment, a receiver to take possession of the Property and to collect and receive rents and profits arising therefrom. Any amounts so collected shall be used to pay taxes on, provide insurance for, pay costs of needed repairs and for any other expenses relating to the Property or the foreclosure proceedings, such expenses as authorized by the court. Any sum remaining after such payments will be applied to the Obligations.
11. **PROPERTY OBLIGATIONS.** Mortgagor shall promptly pay all taxes, assessments, levies, water rents, other rents, insurance premiums and all amounts due on any encumbrances, if any, as they become due. Mortgagor shall provide written proof to Bank of such payment(s).
12. **INSURANCE.** Mortgagor shall insure and keep insured the Property against loss by fire, and other hazard, casualty and loss, with extended coverage including but not limited to the replacement value of all improvements, with an insurance company acceptable to Bank and in an amount acceptable to Bank. Such insurance shall contain the standard "Mortgage Clause" and where applicable, "Loss Payee Clause", which shall name and endorse Bank as mortgagee and loss payee. Such insurance shall also contain a provision under which the insurer shall give Bank at least 30 days notice before the cancellation, termination or material change in coverage.

If an insurer elects to pay a fire or other hazard loss or damage claim rather than to repair, rebuild or replace the Property lost or damaged, Bank shall have the option to apply such insurance proceeds upon the Obligations secured by this Mortgage or to have said Property repaired or rebuilt. Mortgagor shall deliver or cause to deliver evidence of such coverage and copies of all notices and renewals relating thereto. Bank shall be entitled to pursue any claim under the insurance if Mortgagor fails to promptly do so.

Mortgagor shall pay the premiums required to maintain such insurance in effect until such time as the requirement for such insurance terminates. In the event Mortgagor fails to pay such premiums, Bank may, at its option, pay such premiums. Any such payment by Bank shall be repayable upon demand of Bank or if no demand is made, in accordance with the paragraph below titled "BANK MAY PAY".

13. **WASTE.** Mortgagor shall not alienate or encumber the Property to the prejudice of Bank or commit, permit or suffer any waste, impairment or deterioration of the Property, and regardless of natural depreciation, shall keep the Property and all its improvements at all times in good condition and repair. Mortgagor shall comply with and not violate any and all laws and regulations regarding the use, ownership and occupancy of the Property. Mortgagor shall perform and abide by all obligations and restrictions under any declarations, covenants and other documents governing the use, ownership and occupancy of the Property.
14. **CONDITION OF PROPERTY.** As to the Property, Mortgagor shall:
- A. keep all buildings occupied and keep all buildings, structures and improvements in good repair.
 - B. refrain from the commission or allowance of any acts of waste or impairment of the value of the Property or improvements thereon.
 - C. not cut or remove, or permit to be cut or removed, any wood or timber from the Property, which cutting or removal would adversely affect the value of the Property.
 - D. prevent the spread of noxious or damaging weeds, procure and prevent the erosion of the soil and continuously practice approved methods of farming on the Property if used for agricultural purposes.
15. **ENVIRONMENTAL LAWS AND HAZARDOUS SUBSTANCES.**
- A. As used in this paragraph:
 - (1) "Environmental Law" means, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA", 42 U.S.C. 9601 et seq.), all federal, state and local laws, regulations, ordinances, court orders, attorney general opinions or interpretive letters concerning the public health, safety, welfare, environment or a Hazardous Substance (as defined herein).
 - (2) "Hazardous Substance" means any toxic, radioactive or hazardous material, waste, pollutant or contaminant which has characteristics which render the substance dangerous or potentially dangerous to the public health, safety, welfare or the environment. The term includes, without limitation, any substances defined as "hazardous material," "toxic substances," "hazardous waste" or "hazardous substance" under any Environmental Law.

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Mortgagor further agrees and directs that all condemnation proceeds or purchase money which may be agreed upon or which may be found to be due shall be paid to Bank as a prepayment under the Note. Mortgagor also agrees to notify the Bank of any proceedings instituted for the establishment of any sewer, water, conservation, ditch, drainage, or other district relating to or binding upon the Property or any part thereof. All awards payable for the taking of title to, or possession of, or damage to all or any portion of the Property by reason of any private taking, condemnation, eminent domain, change of grade, or other proceeding shall, at the option of Bank, be paid to Bank. Such awards or compensation are hereby assigned to Bank, and judgment therefor shall be entered in favor of Bank.

When paid, such awards shall be used, at Bank's option, toward the payment of the Obligations or payment of taxes, assessments, repairs or other items provided for in this Mortgage, whether due or not, all in such order and manner as Bank may determine. Such application or release shall not cure or waive any default. In the event Bank deems it necessary to appear or answer in any condemnation action, hearing or proceeding, Mortgagor shall hold Bank harmless from and pay all legal expenses, including but not limited to reasonable attorneys' fees and paralegal fees, court costs and other expenses.

21. **OTHER PROCEEDINGS.** If any action or proceeding is commenced to which Bank is made or chooses to become a party by reason of the execution of the Note, this Mortgage, any loan documents or the existence of any Obligations or in which Bank deems it necessary to appear or answer in order to protect its interests, Mortgagor agrees to pay and to hold Bank harmless for all liabilities, costs and expenses paid or incurred by Bank in such action or proceedings, including but not limited to reasonable attorneys' fees, paralegal fees, court costs and other damage and expenses.
22. **WAIVER BY MORTGAGOR.** To the extent not specifically prohibited by law, Mortgagor hereby waives and releases any and all rights and remedies Mortgagor may now have or acquire in the future relating to:
- A. homestead;
 - B. exemptions as to the Property;
 - C. redemption;
 - D. right of reinstatement;
 - E. appraisalment;
 - F. marshalling of liens and assets; and
 - G. statutes of limitations.

In addition, redemption by Mortgagor after foreclosure sale is expressly waived to the extent not prohibited by law.

23. **PARTIAL FORECLOSURE.** In case of default in the payment of the Obligations or in case of payment by Bank of any tax, insurance premium, cost or expense or the filing, imposition or attachment of any lien, judgment or encumbrance, Bank shall have the right, without declaring the whole indebtedness due and payable, to foreclose against the Property or any part thereof on account of such specific default. This Mortgage shall continue as a lien on any of the property not sold on foreclosure for such unpaid balance of the Obligations.
24. **BANK MAY PAY.** If Mortgagor fails to pay when due any of the items it is obligated to pay or fails to perform when obligated to perform, Bank may, at its option:
- A. pay, when due, installments of principal, interest or other obligations, in accordance with the terms of any mortgage or assignment of beneficial interest senior to that of Bank's lien interest;
 - B. pay, when due, installments of any real estate tax imposed on the Property; or
 - C. pay or perform any other obligation relating to the Property which affects, at Bank's sole discretion, the interest of Bank in the Property.

Mortgagor agrees to indemnify Bank and hold Bank harmless for all the amounts so paid and for Bank's costs and expenses, including reasonable attorneys' fees and paralegal fees.

Such payments when made by Bank shall be added to the principal balance of the Obligations and shall bear interest at the rate provided for by the Note as of the date of such payment. Such payments shall be a part of this lien and shall be secured by this Mortgage, having the benefit of the lien and its priority. Mortgagor agrees to pay and to reimburse Bank for all such payments.

25. **TERM.** This Mortgage shall remain in effect until terminated in writing.

20. GENERAL PROVISIONS.

- A. **TIME IS OF THE ESSENCE.** Time is of the essence in Mortgagor's performance of all duties and obligations imposed by this Mortgage.
- B. **NO WAIVER BY BANK.** Bank's course of dealing, or Bank's forbearance from, or delay in, the exercise of any of Bank's rights, remedies, privileges or right to insist upon Mortgagor's strict performance of any provisions contained in this Mortgage, or other loan documents, shall not be construed as a waiver by Bank, unless any such waiver is in writing and is signed by Bank. The acceptance by Bank of any sum in payment or partial payment on the Obligations after the balance is due or is accelerated or after foreclosure proceedings are filed shall not constitute a waiver of Bank's right to require full and complete cure of any existing default for which such actions by Bank were taken or its right to require prompt payment when due of all other remaining sums due under the Obligations, nor will it cure or waive any default not completely cured or any other defaults, or operate as a defense to any foreclosure proceedings or deprive Bank of any rights, remedies and privileges due Bank under the Note, this Mortgage, other loan documents, the law or equity.
- C. **AMENDMENT.** The provisions contained in this Mortgage may not be amended, except through a written amendment which is signed by Mortgagor and Bank.
- D. **INTEGRATION CLAUSE.** This written Mortgage and all documents executed concurrently herewith, represent the entire understanding between the parties as to the Obligations and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties.
- E. **FURTHER ASSURANCES.** Mortgagor agrees, upon request of Bank and within the time Bank specifies, to provide any information, and to execute, acknowledge, deliver and record or file such further instruments or documents as may be required by Bank to secure the Note or confirm any lien.

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- F. GOVERNING LAW. This Mortgage shall be governed by the laws of the State of ILLINOIS, provided that such laws are not otherwise preempted by federal laws and regulations.
- G. FORUM AND VENUE. In the event of litigation pertaining to this Mortgage, the exclusive forum, venue and place of jurisdiction shall be in the State of ILLINOIS, unless otherwise designated in writing by Bank or otherwise required by law.
- H. SUCCESSORS. This Mortgage shall inure to the benefit of and bind the heirs, personal representatives, successors and assigns of the parties; provided however, that Mortgagor may not assign, transfer or delegate any of the rights or obligations under this Mortgage.
- I. NUMBER AND GENDER. Whenever used, the singular shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.
- J. DEFINITIONS. The terms used in this Mortgage, if not defined herein, shall have their meanings as defined in the other documents executed contemporaneously, or in conjunction, with this Mortgage.
- K. PARAGRAPH HEADINGS. The headings at the beginning of any paragraph, or any subparagraph, in this Mortgage are for convenience only and shall not be dispositive in interpreting or construing this Mortgage.
- L. IF HELD UNENFORCEABLE. If any provision of this Mortgage shall be held unenforceable or void, then such provision to the extent not otherwise limited by law shall be severable from the remaining provisions and shall in no way affect the enforceability of the remaining provisions nor the validity of this Mortgage.
- M. CHANGE IN APPLICATION. Mortgagor will notify Bank in writing prior to any change in Mortgagor's name, address, or other application information.
- N. NOTICE. All notices under this Mortgage must be in writing. Any notice given by Bank to Mortgagor hereunder will be effective upon personal delivery or 24 hours after mailing by first class United States mail, postage prepaid, addressed to Mortgagor at the address indicated below Mortgagor's name on page one of this Mortgage. Any notice given by Mortgagor to Bank hereunder will be effective upon receipt by Bank at the address indicated below Bank's name on page one of this Mortgage. Such addresses may be changed by written notice to the other party.
- O. FILING AS FINANCING STATEMENT. Mortgagor agrees and acknowledges that this Mortgage also suffices as a financing statement and as such, may be filed of record as a financing statement for purposes of Article 9 of the ILLINOIS Uniform Commercial Code. A carbon, photographic or other reproduction of this Mortgage is sufficient as a financing statement.

27. ACKNOWLEDGMENT. By the signature(s) below, Mortgagor acknowledges that this Mortgage has been read and agreed to and that a copy of this Mortgage has been received by the Mortgagor.

MORTGAGOR:

Jerry Kennelly
 JERRY KENNELLY
 Individually

Patrick McInerney
 PATRICK MCINERNEY
 Individually

STATE OF Illinois

COUNTY OF Cook ss:
 On this 29 day of April, 1996

....., a notary public, certify that JERRY KENNELLY, AN UNMARRIED PERSON, 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 (he/she) signed and delivered the instrument as (his/hor) free and voluntary act, for the uses and purposes set forth.
 My commission expires:

[Signature]
 NOTARY PUBLIC

STATE OF Illinois

COUNTY OF Cook ss:
 On this 29 day of April, 1996

....., a notary public, certify that PATRICK MCINERNEY, A MARRIED PERSON, 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 (he/she) signed and delivered the instrument as (his/hor) free and voluntary act, for the uses and purposes set forth.
 My commission expires:

[Signature]
 NOTARY PUBLIC

THIS IS THE LAST PAGE OF A 6 PAGE DOCUMENT. EXHIBITS AND/OR ADDENDA MAY FOLLOW.

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