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1999-07-21 12:40:20  
Cook County Recorder 39.50



**MENZEL**  
RECORDATION REQUESTED BY:  
Harris Bank Arlington-Meadows  
3225 Kirchoff Road  
Rolling Meadows, IL 60008

50134058

WHEN RECORDED MAIL TO:  
Harris Banks  
150 W. Wilson Street  
Palatine, IL 60067

FOR RECORDER'S USE ONLY

RE TITLE SERVICES # 694458

10  
[Signature]

This Mortgage prepared by: **BETTY KILGORE**  
150 W. Wilson Street  
Palatine, IL 60067



**MORTGAGE**

111 East Busse Avenue  
Mount Prospect, IL 60056

THIS MORTGAGE IS DATED JUNE 18, 1999, between AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, AS SUCCESSOR TRUSTEE TO NBD BANK, whose address is 8001 LINCOLN AVE. ATTN: TRUST DEPT., ~~SKOKIE, IL 60077~~ (referred to below as "Grantor"); and Harris Bank Arlington-Meadows, whose address is 3225 Kirchoff Road, Rolling Meadows, IL 60008 (referred to below as "Lender").

**GRANT OF MORTGAGE.** For valuable consideration, Grantor not personally but as Trustee under the provisions of a deed or deeds in trust duly recorded and delivered to Grantor pursuant to a Trust Agreement dated July 13, 1989 and known as # 4135-AH, mortgages and conveys to Lender all of Grantor's right, title, and interest in and to the following described real property, together with all existing or subsequently erected or affixed buildings, improvements and fixtures; all easements, rights of way, and appurtenances; all water, water rights, watercourses and ditch rights (including stock in utilities with ditch or irrigation rights); and all other rights, royalties, and profits relating to the real property, including without limitation all minerals, oil, gas, geothermal and similar matters, located in COOK County, State of Illinois (the "Real Property"):

**LOT 67 IN PLUM GROVE COUNTRYSIDE UNIT NUMBER 4, BEING A SUBDIVISION OF PART OF SECTION 26, TOWNSHIP 42 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MARCH 21, 1962 AS DOCUMENT NUMBER 18428913, IN COOK COUNTY, ILLINOIS.**

The Real Property or its address is commonly known as 1886 VERMONT, ROLLING MEADOWS, IL 60008. The Real Property tax identification number is 02-26-111-007.

Grantor presently assigns to Lender all of Grantor's right, title, and interest in and to all leases of the Property and all Rents from the Property. In addition, Grantor grants to Lender a Uniform Commercial Code security interest in the Personal Property and Rents.

**DEFINITIONS.** The following words shall have the following meanings when used in this Mortgage. Terms not otherwise defined in this Mortgage shall have the meanings attributed to such terms in the Uniform Commercial Code. All references to dollar amounts shall mean amounts in lawful money of the United States of America.

**Borrower.** The word "Borrower" means each and every person or entity signing the Note, including without limitation THOMAS F. MENZEL.

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**Related Documents.** The words "Related Documents" mean and include without limitation all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, "Grant of Mortgage" section.

**Real Property.** The words "Real Property" mean the property, interests and rights described above in the "Grant of Mortgage" section.

**Personal Property.** The words "Personal Property" mean all equipment, fixtures, and other articles of personal property now or hereafter owned by Grantor, and now or hereafter attached or affixed to the Real Property; together with all accessions, parts, and additions to, all replacements of, and all substitutions for, any refunds of premiums) from any sale or other disposition of the Property.

**Mortgage.** The word "Mortgage" means this Mortgage between Grantor and Lender, and includes without limitation all assignments and security interest provisions relating to the Personal Property and Rents. The word "Lender" means Harris Bank Arlington-Meadows, its successors and assigns. The Lender is the mortgagee under this Mortgage.

**Indebtedness.** The word "Indebtedness" means all principal and interest payable under the Credit Agreement and any amounts expended or advanced by Lender to discharge obligations of Grantor or expenses incurred by Lender to enforce obligations of Grantor under this Mortgage, together with interest on such amounts as provided in this Mortgage. Specifically, without limitation, this Mortgage secures a revolving line of credit and shall secure not only the amount which Lender has presently advanced to Borrower under the Credit Agreement, but also any future amounts which Lender may advance to Borrower under the Credit Agreement within twenty (20) years from the date of this Mortgage to the same extent as if such future advance were made as of the date of the execution of this Mortgage. The revolving line of credit obligates Lender to make advances to Borrower so long as Borrower complies with all the terms of the Credit Agreement and Related Documents. Such advances may be made, repaid, and remade from time to time, subject to the limitation that the total outstanding balance owing at any one time, not including finance charges on such balance at a fixed or variable rate or sum as provided in the Credit Agreement, any temporary overages, other charges, and any amounts expended or advanced as provided in this paragraph, shall not exceed the Credit Limit as provided in the Credit Agreement. It is the intention of Grantor and Lender that this Mortgage secures the balance outstanding under the Credit Agreement from time to time from zero up to the Credit Limit as provided above and any intermediate balance. At no time shall the principal amount of indebtedness secured by the Mortgage, not including sums advanced to protect the security of the Mortgage, exceed \$46,250.00.

**Improvements.** The word "Improvements" means and includes without limitation all existing and future improvements, buildings, structures, mobile homes affixed on the Real Property, facilities, additions, replacements and other construction on the Real Property.

**Guarantor.** The word "Guarantor" means and includes without limitation each and all of the guarantors, sureties, and accommodation parties in connection with the Indebtedness.

**Existing Indebtedness.** The words "Existing Indebtedness" mean the indebtedness described below in the Existing Indebtedness section of this Mortgage.

**Credit Agreement.** The words "Credit Agreement" mean the revolving line of credit agreement dated June 18, 1999, between Lender and Borrower with a credit limit of \$37,000.00, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the Credit Agreement. The interest rate under the Credit Agreement is a variable interest rate based upon an index. The index currently is 7.750% per annum. The interest rate to be applied to the outstanding account balance shall be at a rate equal to the index, subject however to the following maximum rate. Under no circumstances shall the interest rate be more than the lesser of 18.000% per annum or the maximum rate allowed by applicable law.

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mortgages, deeds of trust, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Indebtedness.

**Rents.** The word "Rents" means all present and future rents, revenues, income, issues, royalties, profits, and other benefits derived from the Property.

**THIS MORTGAGE, INCLUDING THE ASSIGNMENT OF RENTS AND THE SECURITY INTEREST IN THE RENTS AND PERSONAL PROPERTY, IS GIVEN TO SECURE (1) PAYMENT OF THE INDEBTEDNESS AND (2) PERFORMANCE OF ALL OBLIGATIONS OF GRANTOR UNDER THIS MORTGAGE AND THE RELATED DOCUMENTS. THIS MORTGAGE IS INTENDED TO AND SHALL BE VALID AND HAVE PRIORITY OVER ALL SUBSEQUENT LIENS AND ENCUMBRANCES, INCLUDING STATUTORY LIENS, EXCEPTING SOLELY TAXES AND ASSESSMENTS LEVIED ON THE REAL PROPERTY, TO THE EXTENT OF THE MAXIMUM AMOUNT SECURED HEREBY. THIS MORTGAGE IS GIVEN AND ACCEPTED ON THE FOLLOWING TERMS:**

**GRANTOR'S WAIVERS.** Grantor waives all rights or defenses arising by reason of any "one action" or "anti-deficiency" law, or any other law which may prevent Lender from bringing any action against Grantor, including a claim for deficiency to the extent Lender is otherwise entitled to a claim for deficiency, before or after Lender's commencement or completion of any foreclosure action, either judicially or by exercise of a power of sale.

**GRANTOR'S REPRESENTATIONS AND WARRANTIES.** Grantor warrants that: (a) this Mortgage is executed at Borrower's request and not at the request of Lender; (b) Grantor has the full power, right, and authority to enter into this Mortgage and to hypothecate the Property; (c) the provisions of this Mortgage do not conflict with, or result in a default under any agreement or other instrument binding upon Grantor and do not result in a violation of any law, regulation, court decree or order applicable to Grantor; (d) Grantor has established adequate means of obtaining from Borrower on a continuing basis information about Borrower's financial condition; and (e) Lender has made no representation to Grantor about Borrower (including without limitation the creditworthiness of Borrower).

**PAYMENT AND PERFORMANCE.** Except as otherwise provided in this Mortgage, Borrower shall pay to Lender all indebtedness secured by this Mortgage as it becomes due, and Borrower and Grantor shall strictly perform all their respective obligations under this Mortgage.

**POSSESSION AND MAINTENANCE OF THE PROPERTY.** Grantor and Borrower agree that Grantor's possession and use of the Property shall be governed by the following provisions:

**Possession and Use.** Until in default, Grantor may remain in possession and control of and operate and manage the Property and collect the Rents from the Property.

**Duty to Maintain.** Grantor shall maintain the Property in tenantable condition and promptly perform all repairs, replacements, and maintenance necessary to preserve its value.

**Hazardous Substances.** The terms "hazardous waste," "hazardous substance," "disposal," "release," and "threatened release," as used in this Mortgage, shall have the same meanings as set forth in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., or other applicable state or Federal laws, rules, or regulations adopted pursuant to any of the foregoing. The terms "hazardous waste" and "hazardous substance" shall also include, without limitation, petroleum and petroleum by-products or any fraction thereof and asbestos. Grantor represents and warrants to Lender that: (a) During the period of Grantor's ownership of the Property, there has been no use, generation, manufacture, storage, treatment, disposal, release or threatened release of any hazardous waste or substance by any person on, under, about or from the Property; (b) Grantor has no knowledge of, or reason to believe that there has been, except as previously disclosed to and acknowledged by Lender in writing, (i) any use, generation, manufacture, storage, treatment, disposal, release, or threatened release of any hazardous waste or substance on, under, about or from the Property by any prior owners or occupants of the Property or (ii) any actual or threatened litigation or claims of any kind by any person relating to such matters; and (c) Except as previously disclosed to and acknowledged by Lender in writing, (i) neither Grantor nor any tenant, contractor, agent or other authorized user of the Property shall use, generate, manufacture, store, treat, dispose of, or release any hazardous waste or substance on, under, about or from the Property and (ii) any such activity shall be conducted in compliance with all applicable federal, state, and local laws, regulations and ordinances, including without limitation those laws, regulations, and ordinances described above. Grantor authorizes Lender and its agents to enter upon the Property to make such inspections and tests, at Grantor's expense, as Lender may deem appropriate to determine compliance of the Property with this section of the Mortgage. Any inspections or tests made by Lender shall be for Lender's purposes only and shall not be construed to create any responsibility or liability on the part of Lender to Grantor or to any other person. The representations and warranties contained herein are based on Grantor's due diligence in investigating the Property for hazardous waste and hazardous substances. Grantor hereby (a) releases and waives any future claims against Lender for indemnity or contribution in the event Grantor becomes liable for cleanup or other costs under any such laws, and (b) agrees to indemnify and hold harmless Lender against any and all claims, losses, liabilities, damages, penalties, and expenses which Lender may directly or indirectly sustain or suffer resulting from a breach of this section of the Mortgage or as a consequence of any use, generation, manufacture, storage, disposal, release or threatened release of a hazardous waste or substance on the properties. The provisions of this section of the Mortgage, including the obligation to indemnify, shall survive the payment of the Indebtedness



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**Maintenance of Insurance.** Grantor shall procure and maintain policies of fire insurance with standard extended coverage endorsements on a replacement basis for the full insurable value covering all

**PROPERTY DAMAGE INSURANCE.** The following provisions relating to insuring the Property are a part of this Mortgage.

that Grantor can and will pay the cost of such improvements.  
\$10,000.00. Grantor will upon request of Lender furnish to Lender advance assurances satisfactory to Lender  
lien, or other lien could be asserted on account of the work, services, or materials and the cost exceeds  
any services are furnished, or any materials are supplied to the Property, if any mechanic's lien, materialmen's  
**Notice of Construction.** Grantor shall notify Lender at least fifteen (15) days before any work is commenced,

a written statement of the taxes and assessments against the Property.  
Evidence of Payment. Grantor shall upon demand furnish to Lender satisfactory evidence of payment of the  
taxes or assessments and shall authorize the appropriate governmental official to deliver to Lender at any time

proceedings.  
Grantor shall name Lender as an additional obligee under any surety bond furnished in the contest  
defend itself and Lender and shall satisfy any adverse judgment before enforcement against the Property.  
changes that could accrue as a result of a foreclosure or sale under the lien. In any contest, Grantor shall  
satisfactory to Lender in an amount sufficient to discharge the lien plus any costs and attorneys' fees or other  
requested by Lender, deposit with Lender cash or a sufficient corporate surety bond or other security  
lien is filed, within fifteen (15) days after Grantor has notice of the filing, secure the discharge of the lien, or if  
arises or is filed as a result of nonpayment, Grantor shall within fifteen (15) days after the lien arises or, if a  
fails to dispute over the obligation to pay, so long as Lender's interest in the Property is not jeopardized. If a lien  
**Right to Contest.** Grantor may withhold payment of any tax, assessment, or claim in connection with a good

indebtedness referred to below, and except as otherwise provided in the following paragraph.  
Lender under this Mortgage, except for the lien of taxes and assessments not due, except for the Existing  
Property. Grantor shall maintain the Property free of all liens having priority over or equal to the interest of  
and shall pay when due all claims for work done on or for services rendered or material furnished to the  
taxes, assessments, water charges and sewer service charges levied against or on account of the Property, special  
Payment. Grantor shall pay when due (and in all events prior to delinquency) all taxes, payroll taxes, special

**TAXES AND LIENS.** The following provisions relating to the taxes and liens on the Property are a part of this Mortgage.

by Lender if such exercise is prohibited by federal law or by Illinois law.  
or limited liability company interests, as the case may be, of Grantor. However, this option shall not be exercised  
includes any change in ownership of more than twenty-five percent (25%) of the voting stock, partnership interests  
of Real Property interest. If any Grantor is a corporation, partnership or limited liability company, transfer also  
beneficial interest in or to any land trust holding title to the Real Property, or by any other method of conveyance  
interest with a term greater than three (3) years, lease-option contract, or by sale, assignment, or transfer of any  
involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold  
Property or any right, title or interest therein, whether legal, beneficial or equitable; whether voluntary or  
part of the Real Property, or any interest in the Real Property. A "sale or transfer" means the conveyance of Real  
sums secured by this Mortgage upon the sale or transfer, without the Lender's prior written consent, of all or any  
DUE ON SALE - CONSENT BY LENDER. Lender may, at its option, declare immediately due and payable all

Property are reasonably necessary to protect and preserve the Property.  
other acts, in addition to those acts set forth above in this section, which from the character and use of the  
Duty to Protect. Grantor agrees neither to abandon nor leave unattended the Property. Grantor shall do all

protect Lender's interest  
Lender may require Grantor to post adequate security or a surety bond, reasonably satisfactory to Lender, to  
doing so and so long as, in Lender's sole opinion, Lender's interests in the Property are not jeopardized.  
during any proceeding, including appropriate appeals, so long as Grantor has notified Lender in writing prior to  
Property. Grantor may contest in good faith any such law, ordinance, or regulation and withhold compliance  
regulations, new or hereafter in effect, of all governmental authorities applicable to the use or occupancy of the  
Compliance with Governmental Requirements. Grantor shall promptly comply with all laws, ordinances, and

compliance with the terms and conditions of this Mortgage.  
reasonable times to attend to Lender's interests and to inspect the Property for purposes of Grantor's  
Lender's Right to Enter. Lender and its agents and representatives may enter upon the Real Property at all  
Improvements of at least equal value.

require Grantor to make arrangements satisfactory to Lender to replace such improvements with  
without the prior written consent of Lender. As a condition to the removal of any improvements, Lender may  
Removal of Improvements. Grantor shall not demolish or remove any improvements from the Real Property  
(including oil and gas), soil, gravel or rock products without the prior written consent of Lender.

Nuisance, Waste. Grantor shall not cause, conduct or permit any nuisance nor commit, permit, or suffer any  
stripping of or waste on or to the Property or any portion of the Property. Without limiting the generality of the  
foregoing, Grantor will not remove, or grant to any other party the right to remove, any timber, minerals  
and the satisfaction and reconveyance of the lien of this Mortgage and shall not be affected by Lender's  
acquisition of any interest in the Property, whether by foreclosure or otherwise.

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Improvements on the Real Property in an amount sufficient to avoid application of any coinsurance clause, and with a standard mortgagee clause in favor of Lender. Policies shall be written by such insurance companies and in such form as may be reasonably acceptable to Lender. Grantor shall deliver to Lender certificates of coverage from each insurer containing a stipulation that coverage will not be cancelled or diminished without a minimum of ten (10) days' prior written notice to Lender and not containing any disclaimer of the insurer's liability for failure to give such notice. Each insurance policy also shall include an endorsement providing that coverage in favor of Lender will not be impaired in any way by any act, omission or default of Grantor or any other person. Should the Real Property at any time become located in an area designated by the Director of the Federal Emergency Management Agency as a special flood hazard area, Grantor agrees to obtain and maintain Federal Flood Insurance for the full unpaid principal balance of the loan, up to the maximum policy limits set under the National Flood Insurance Program, or as otherwise required by Lender, and to maintain such insurance for the term of the loan.

**Application of Proceeds.** Grantor shall promptly notify Lender of any loss or damage to the Property if the estimated cost of repair or replacement exceeds \$5,000.00. Lender may make proof of loss if Grantor fails to do so within fifteen (15) days of the casualty. Whether or not Lender's security is impaired, Lender may, at its election, apply the proceeds to the reduction of the Indebtedness, payment of any lien affecting the Property, or the restoration and repair of the Property. If Lender elects to apply the proceeds to restoration and repair, Grantor shall repair or replace the damaged or destroyed Improvements in a manner satisfactory to Lender. Lender shall, upon satisfactory proof of such expenditure, pay or reimburse Grantor from the proceeds for the reasonable cost of repair or restoration if Grantor is not in default under this Mortgage. Any proceeds which have not been disbursed within 180 days after their receipt and which Lender has not committed to the repair or restoration of the Property shall be used first to pay any amount owing to Lender under this Mortgage, then to pay accrued interest, and the remainder, if any, shall be applied to the principal balance of the Indebtedness. If Lender holds any proceeds after payment in full of the Indebtedness, such proceeds shall be paid to Grantor.

**Unexpired Insurance at Sale.** Any unexpired insurance shall inure to the benefit of, and pass to, the purchaser of the Property covered by this Mortgage at any trustee's sale or other sale held under the provisions of this Mortgage, or at any foreclosure sale of such Property.

**Compliance with Existing Indebtedness.** During the period in which any Existing Indebtedness described below is in effect, compliance with the insurance provisions contained in the instrument evidencing such Existing Indebtedness shall constitute compliance with the insurance provisions under this Mortgage, to the extent compliance with the terms of this Mortgage would constitute a duplication of insurance requirement. If any proceeds from the insurance become payable on loss, the provisions in this Mortgage for division of proceeds shall apply only to that portion of the proceeds not payable to the holder of the Existing Indebtedness.

**EXPENDITURES BY LENDER.** If Grantor fails to comply with any provision of this Mortgage, including any obligation to maintain Existing Indebtedness in good standing as required below, or if any action or proceeding is commenced that would materially affect Lender's interests in the Property, Lender on Grantor's behalf may, but shall not be required to, take any action that Lender deems appropriate. Any amount that Lender expends in so doing will bear interest at the rate provided for in the Credit Agreement from the date incurred or paid by Lender to the date of repayment by Grantor. All such expenses, at Lender's option, will (a) be payable on demand, (b) be added to the balance of the credit line and be apportioned among and be payable with any installment payments to become due during either (i) the term of any applicable insurance policy or (ii) the remaining term of the Credit Agreement, or (c) be treated as a balloon payment which will be due and payable at the Credit Agreement's maturity. This Mortgage also will secure payment of these amounts. The rights provided for in this paragraph shall be in addition to any other rights or any remedies to which Lender may be entitled on account of the default. Any such action by Lender shall not be construed as curing the default so as to bar Lender from any remedy that it otherwise would have had.

**WARRANTY; DEFENSE OF TITLE.** The following provisions relating to ownership of the Property are a part of this Mortgage.

**Title.** Grantor warrants that: (a) Grantor holds good and marketable title of record to the Property in fee simple, free and clear of all liens and encumbrances other than those set forth in the Real Property description or in the Existing Indebtedness section below or in any title insurance policy, title report, or final title opinion issued in favor of, and accepted by, Lender in connection with this Mortgage, and (b) Grantor has the full right, power, and authority to execute and deliver this Mortgage to Lender.

**Defense of Title.** Subject to the exception in the paragraph above, Grantor warrants and will forever defend the title to the Property against the lawful claims of all persons. In the event any action or proceeding is commenced that questions Grantor's title or the interest of Lender under this Mortgage, Grantor shall defend the action at Grantor's expense. Grantor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of Lender's own choice, and Grantor will deliver, or cause to be delivered, to Lender such instruments as Lender may request from time to time to permit such participation.

**Compliance With Laws.** Grantor warrants that the Property and Grantor's use of the Property complies with all existing applicable laws, ordinances, and regulations of governmental authorities.

**EXISTING INDEBTEDNESS.** The following provisions concerning existing indebtedness (the "Existing Indebtedness") are a part of this Mortgage.

**Existing Lien.** The lien of this Mortgage securing the Indebtedness may be secondary and inferior to an existing lien. Grantor expressly covenants and agrees to pay, or see to the payment of, the Existing Indebtedness and to prevent any default on such indebtedness, any default under the instruments evidencing

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such indebtedness, or any default under any security documents for such indebtedness.

**No Modification.** Grantor shall not enter into any agreement with the holder of any mortgage, deed of trust, or other security agreement which has priority over this Mortgage by which that agreement is modified, amended, extended, or renewed without the prior written consent of Lender. Grantor shall neither request nor accept any future advances under any such security agreement without the prior written consent of Lender.

**CONDEMNATION.** The following provisions relating to condemnation of the Property are a part of this Mortgage.

**Application of Net Proceeds.** If all or any part of the Property is condemned by eminent domain proceedings or by any proceeding or purchase in lieu of condemnation, Lender may at its election require that all or any portion of the net proceeds of the award be applied to the indebtedness or the repair or restoration of the Property. The net proceeds of the award shall mean the award after payment of all reasonable costs, expenses, and attorneys' fees incurred by Lender in connection with the condemnation.

**Proceedings.** If any proceeding in condemnation is filed, Grantor shall promptly notify Lender in writing, and Grantor shall promptly take such steps as may be necessary to defend the action and obtain the award. Grantor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of its own choice, and Grantor will deliver or cause to be delivered to Lender such instruments as may be requested by it from time to time to permit such participation.

**IMPOSITION OF TAXES, FEES AND CHARGES BY GOVERNMENTAL AUTHORITIES.** The following provisions relating to governmental taxes, fees and charges are a part of this Mortgage:

**Current Taxes, Fees and Charges.** Upon request by Lender, Grantor shall execute such documents in addition to this Mortgage and take whatever other action is requested by Lender to perfect and continue Lender's lien on the Real Property. Grantor shall reimburse Lender for all taxes, as described below, together with all expenses incurred in recording, perfecting or continuing this Mortgage, including without limitation all taxes, fees, documentary stamps and other charges for recording or registering this Mortgage.

**Taxes.** The following shall constitute taxes to which this section applies: (a) a specific tax upon this type of Mortgage or upon all or any part of the indebtedness secured by this Mortgage; (b) a specific tax on Borrower which Borrower is authorized or required to deduct from payments on the indebtedness secured by this type of Mortgage; (c) a tax on this type of Mortgage chargeable against the Lender or the holder of the Credit Agreement; and (d) a specific tax on all or any portion of the indebtedness or on payments of principal and interest made by Borrower.

**Subsequent Taxes.** If any tax to which this section applies is enacted subsequent to the date of this Mortgage, this event shall have the same effect as an Event of Default (as defined below), and Lender may exercise any or all of its available remedies for an Event of Default as provided below unless Grantor either (a) pays the tax before it becomes delinquent, or (b) contests the tax as provided above in the Taxes and Liens section and deposits with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender.

**SECURITY AGREEMENT; FINANCING STATEMENTS.** The following provisions relating to this Mortgage as a security agreement shall constitute a security agreement to the extent any of the Property constitutes fixtures or other personal property, and Lender shall have all of the rights of a secured party under the Uniform Commercial Code as amended from time to time.

**Security Interest.** Upon request by Lender, Grantor shall execute financing statements and take whatever other action is requested by Lender to record this Mortgage in the real property records, Lender may, at any time and without further authorization from Grantor, file executed counterparts, copies or reproductions of this Mortgage as a financing statement. Grantor shall reimburse Lender for all expenses incurred in perfecting or continuing this security interest. Upon default, Grantor shall assemble the Personal Property in a manner and at a place reasonably convenient to Grantor and Lender and make it available to Lender within three (3) days after receipt of written demand from Lender.

**Addresses.** The mailing addresses of Grantor (debtor) and Lender (secured party), from which information concerning the security interest granted by this Mortgage may be obtained (each as required by the Uniform Commercial Code), are as stated on the first page of this Mortgage.

**FURTHER ASSURANCES; ATTORNEY-IN-FACT.** The following provisions relating to further assurances and attorney-in-fact are a part of this Mortgage:

**Further Assurances.** At any time, and from time to time, upon request of Lender, Grantor will make, execute and deliver, or will cause to be made, executed or delivered, to Lender or to Lender's designee, and when requested by Lender, cause to be filed, recorded, refiled, or re-recorded, as the case may be, at such times and in such offices as Lender may deem appropriate, any and all such mortgages, deeds of trust, security deeds, security agreements, financing statements, continuation statements, instruments of further assurance, certificates, and other documents as may, in the sole opinion of Lender, be necessary or desirable in order to effectuate, complete, perfect, continue, or preserve (a) the obligations of Grantor and Borrower under the Credit Agreement, this Mortgage, and the Related Documents, and (b) the liens and security interests created by this Mortgage on the Property, whether now owned or hereafter acquired by Grantor. Unless prohibited by law or agreed to the contrary by Lender in writing, Grantor shall reimburse Lender for all costs and expenses incurred in connection with the matters referred to in this paragraph.

**Attorney-in-Fact.** If Grantor fails to do any of the things referred to in the preceding paragraph, Lender hereby do so for and in the name of Grantor and at Grantor's expense. For such purposes, Grantor hereby



irrevocably appoints Lender as Grantor's attorney-in-fact for the purpose of making, executing, delivering, filing, recording, and doing all other things as may be necessary or desirable, in Lender's sole opinion, to accomplish the matters referred to in the preceding paragraph.

**FULL PERFORMANCE.** If Borrower pays all the Indebtedness when due, terminates the credit line account, and otherwise performs all the obligations imposed upon Grantor under this Mortgage, Lender shall execute and deliver to Grantor a suitable satisfaction of this Mortgage and suitable statements of termination of any financing statement on file evidencing Lender's security interest in the Rents and the Personal Property. Grantor will pay, if permitted by applicable law, any reasonable termination fee as determined by Lender from time to time. If, however, payment is made by Borrower, whether voluntarily or otherwise, or by guarantor or by any third party, on the Indebtedness and thereafter Lender is forced to remit the amount of that payment (a) to Borrower's trustee in bankruptcy or to any similar person under any federal or state bankruptcy law or law for the relief of debtors, (b) by reason of any judgment, decree or order of any court or administrative body having jurisdiction over Lender or any of Lender's property, or (c) by reason of any settlement or compromise of any claim made by Lender with any claimant (including without limitation Borrower), the Indebtedness shall be considered unpaid for the purpose of enforcement of this Mortgage and this Mortgage shall continue to be effective or shall be reinstated, as the case may be, notwithstanding any cancellation of this Mortgage or of any note or other instrument or agreement evidencing the Indebtedness and the Property will continue to secure the amount repaid or recovered to the same extent as if that amount never had been originally received by Lender, and Grantor shall be bound by any judgment, decree, order, settlement or compromise relating to the Indebtedness or to this Mortgage.

**DEFAULT.** Each of the following, at the option of Lender, shall constitute an event of default ("Event of Default") under this Mortgage: (a) Grantor commits fraud or makes a material misrepresentation at any time in connection with the credit line account. This can include, for example, a false statement about Grantor's income, assets, liabilities, or any other aspects of Grantor's financial condition. (b) Grantor does not meet the repayment terms of the credit line account. (c) Grantor's action or inaction adversely affects the collateral for the credit line account or Lender's rights in the collateral. This can include, for example, failure to maintain required insurance, waste or destructive use of the dwelling, failure to pay taxes, death of all persons liable on the account, transfer of title or sale of the dwelling, creation of a lien on the dwelling without Lender's permission, foreclosure by the holder of another lien, or the use of funds or the dwelling for prohibited purposes.

**RIGHTS AND REMEDIES ON DEFAULT.** Upon the occurrence of any Event of Default and at any time thereafter, Lender, at its option, may exercise any one or more of the following rights and remedies, in addition to any other rights or remedies provided by law:

**Accelerate Indebtedness.** Lender shall have the right at its option without notice to Borrower to declare the entire Indebtedness immediately due and payable, including any prepayment penalty which Borrower would be required to pay.

**UCC Remedies.** With respect to all or any part of the Personal Property, Lender shall have all the rights and remedies of a secured party under the Uniform Commercial Code.

**Collect Rents.** Lender shall have the right, without notice to Grantor or Borrower, to take possession of the Property and collect the Rents, including amounts past due and unpaid, and apply the net proceeds, over and above Lender's costs, against the Indebtedness. In furtherance of this right, Lender may require any tenant or other user of the Property to make payments of rent or use fees directly to Lender. If the Rents are collected by Lender, then Grantor irrevocably designates Lender as Grantor's attorney-in-fact to endorse instruments received in payment thereof in the name of Grantor and to negotiate the same and collect the proceeds. Payments by tenants or other users to Lender in response to Lender's demand shall satisfy the obligations for which the payments are made, whether or not any proper grounds for the demand existed. Lender may exercise its rights under this subparagraph either in person, by agent, or through a receiver.

**Mortgagee in Possession.** Lender shall have the right to be placed as mortgagee in possession or to have a receiver appointed to take possession of all or any part of the Property, with the power to protect and preserve the Property, to operate the Property preceding foreclosure or sale, and to collect the Rents from the Property and apply the proceeds, over and above the cost of the receivership, against the Indebtedness. The mortgagee in possession or receiver may serve without bond if permitted by law. Lender's right to the appointment of a receiver shall exist whether or not the apparent value of the Property exceeds the Indebtedness by a substantial amount. Employment by Lender shall not disqualify a person from serving as a receiver.

**Judicial Foreclosure.** Lender may obtain a judicial decree foreclosing Grantor's interest in all or any part of the Property.

**Deficiency Judgment.** If permitted by applicable law, Lender may obtain a judgment for any deficiency remaining in the Indebtedness due to Lender after application of all amounts received from the exercise of the rights provided in this section.

**Other Remedies.** Lender shall have all other rights and remedies provided in this Mortgage or the Credit Agreement or available at law or in equity.

**Sale of the Property.** To the extent permitted by applicable law, Grantor or Borrower hereby waive any and all right to have the property marshalled. In exercising its rights and remedies, Lender shall be free to sell all or any part of the Property together or separately, in one sale or by separate sales. Lender shall be entitled to bid at any public sale on all or any portion of the Property.

**Notice of Sale.** Lender shall give Grantor reasonable notice of the time and place of any public sale of the Personal Property or of the time after which any private sale or other intended disposition of the Personal Property is to be made. Reasonable notice shall mean notice given at least ten (10) days before the time of the sale or disposition.

# UNOFFICIAL COPY

**GRANTOR'S LIABILITY.** This Mortgage is executed by Grantor, not personally but as Trustee as provided above

continuing consent to subsequent instances where such consent is required.  
required in this Mortgage, the granting of such consent by Lender in any instance shall not constitute  
or any of Grantor or Borrower's obligations as to any future transactions. Whenever consent by Lender is  
course of dealing between Lender and Grantor or Borrower, shall constitute a waiver of any of Lender's rights  
to demand strict compliance with that provision or any other provision. No prior waiver by Lender, nor any  
any party of a provision of this Mortgage shall not constitute a waiver of or prejudice the party's right otherwise  
part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by  
the Related Documents (unless such waiver is in writing and signed by Lender. No delay or omission on the  
**Waivers and Consents.** Lender shall not be deemed to have waived any rights under this Mortgage (or under

homestead exemption laws of the State of Illinois as to all indebtedness secured by this Mortgage.  
**Waiver of Homestead Exemption.** Grantor hereby releases and waives all rights and benefits of the

**Time is of the Essence.** Time is of the essence in the performance of this Mortgage.

indebtedness.

forbearance or extension without releasing Grantor from the obligations of this Mortgage or liability under the  
may deal with Grantor's successors with reference to this Mortgage and the indebtedness by way of  
ownership of the Property becomes vested in a person other than Grantor, Lender, without notice to Grantor,  
this Mortgage shall be binding upon and inure to the benefit of the parties, their successors and assigns. If  
**Successors and Assigns.** Subject to the limitations stated in this Mortgage on transfer of Grantor's interest,  
remain valid and enforceable.

cannot be so modified, it shall be stricken and all other provisions of this Mortgage in all other respects shall  
deemed to be within the limits of enforceability or validity; however, if the offending provision shall be  
unenforceable as to any other persons or circumstances. If feasible, any such offending provision shall be  
unenforceable as to any person or circumstance, such finding shall not render that provision invalid or  
Severability. If a court of competent jurisdiction finds any provision of this Mortgage to be invalid or  
consent of Lender.

estate in the Property at any time held by or for the benefit of Lender in any capacity, without the written  
**Merger.** There shall be no merger of the interest or estate created by this Mortgage with any other interest or  
used to interpret or define the provisions of this Mortgage.

**Caption Headings.** Caption headings in this Mortgage are for convenience purposes only and are not to be  
Illinois.

**Applicable Law.** This Mortgage has been delivered to Lender and accepted by Lender in the State of  
Illinois. This Mortgage shall be governed by and construed in accordance with the laws of the State of

bound by the alteration or amendment.

Mortgage shall be effective unless given in writing and signed by the party or parties sought to be charged or  
agreement of the parties as to the matters set forth in this Mortgage. No alteration or amendment to this  
**Amendments.** This Mortgage, together with any Related Documents, constitutes the entire understanding and

**MISCELLANEOUS PROVISIONS.** The following miscellaneous provisions are a part of this Mortgage:

times of Grantor's current address.  
shown near the beginning of this Mortgage. For notice purposes, Grantor agrees to keep Lender informed at all  
foreclosure from the holder of any lien which has priority over this Mortgage shall be sent to Lender's address, as  
other parties, specifying that the purpose of the notice is to change the party's address. All copies of notices of  
Mortgage. Any party may change its address for notices under this Mortgage by giving formal written notice to the  
class, certified or registered mail, postage prepaid, directed to the addresses shown near the beginning of this  
recognized overnight courier, or, if mailed, shall be deemed effective when deposited in the United States mail first  
otherwise required by law) and shall be effective when actually delivered, or when deposited with a nationally  
notice of default and any notice of sale to Grantor, shall be in writing, may be sent by telefacsimile (unless  
**NOTICES TO GRANTOR AND OTHER PARTIES.** Any notice under this Mortgage, including without limitation any

law.  
permitted by applicable law. Borrower also will pay any court costs, in addition to all other sums provided by  
(including foreclosure reports), surveyors' reports, and appraisal fees, and title insurance, to the extent  
any anticipated post-judgment collection services, the cost of searching records, obtaining title reports  
bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals and  
attorneys' fees and Lender's legal expenses whether or not there is a lawsuit, including attorneys' fees for  
by this paragraph include, without limitation, however subject to any limits under applicable law, Lender's  
from the date of expenditure until repaid at the rate provided for in the Credit Agreement. Expenses covered  
enforcement of its rights shall become a part of the Indebtedness payable on demand and shall bear interest  
by Lender that in Lender's opinion are necessary at any time for the protection of its interest or the  
fees at trial and on any appeal. Whether or not any court action is involved, all reasonable expenses incurred  
Mortgage, Lender shall be entitled to recover such sum as the court may adjudge reasonable as attorneys'  
**Attorneys' Fees; Expenses.** If Lender institutes any suit or action to enforce any of the terms of this

default and exercise its remedies under this Mortgage.  
under this Mortgage after failure of Grantor or Borrower to perform shall not affect Lender's right to declare a  
remedy, and an election to make expenditures or take action to perform an obligation of Grantor or Borrower  
or any other provision. Election by Lender to pursue any remedy shall not exclude pursuit of any other  
constitute a waiver of or prejudice the party's rights otherwise to demand strict compliance with that provision  
**Waiver; Election of Remedies.** A waiver by any party of a breach of a provision of this Mortgage shall not



in the exercise of the power and the authority conferred upon and vested in it as such Trustee (and Grantor thereby warrants that it possesses full power and authority to execute this instrument). It is expressly understood and agreed that with the exception of the foregoing warranty, notwithstanding anything to the contrary contained herein, that each and all of the warranties, indemnities, representations, covenants, undertakings, and agreements made in this Mortgage on the part of Grantor, while in form purporting to be the warranties, indemnities, representations, covenants, undertakings, and agreements of Grantor, are nevertheless each and every one of them made and intended not as personal warranties, indemnities, representations, covenants, undertakings, and agreements by Grantor or for the purpose or with the intention of binding Grantor personally, and nothing in this Mortgage or in the Credit Agreement shall be construed as creating any liability on the part of Grantor personally to pay the Credit Agreement or any interest that may accrue thereon, or any other Indebtedness under this Mortgage, or to perform any covenant, undertaking, or agreement, either express or implied, contained in this Mortgage, all such liability, if any, being expressly waived by Lender and by every person now or hereafter claiming any right or security under this Mortgage, and that so far as Grantor and its successors personally are concerned, the legal holder or holders of the Credit Agreement and the owner or owners of any Indebtedness shall look solely to the Property for the payment of the Credit Agreement and Indebtedness, by the enforcement of the lien created by this Mortgage in the manner provided in the Credit Agreement and herein or by action to enforce the personal liability of any Guarantor or obligor, other than Grantor, on the Credit Agreement.

GRANTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS MORTGAGE, AND GRANTOR AGREES TO ITS TERMS.

GRANTOR:

AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, AS SUCCESSOR TRUSTEE TO NBD BANK

By: \_\_\_\_\_  
AUTHORIZED OFFICER, TRUST DEPARTMENT  
SEE RIDER ATTACHED FOR SIGNATURE OF TRUSTEE AND NOTARY ACKNOWLEDGMENT

CORPORATE ACKNOWLEDGMENT

STATE OF \_\_\_\_\_ )

) ss

COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_, before me, the undersigned Notary Public, personally appeared AUTHORIZED OFFICER, TRUST DEPARTMENT of AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, AS SUCCESSOR TRUSTEE TO NBD BANK, and known to me to be an authorized agent of the corporation that executed the Mortgage and acknowledged the Mortgage to be the free and voluntary act and deed of the corporation, by authority of its Bylaws or by resolution of its board of directors, for the uses and purposes therein mentioned, and on oath stated that he or she is authorized to execute this Mortgage and in fact executed the Mortgage on behalf of the corporation.

By \_\_\_\_\_ Residing at \_\_\_\_\_

Notary Public in and for the State of \_\_\_\_\_

My commission expires \_\_\_\_\_

# UNOFFICIAL COPY

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.

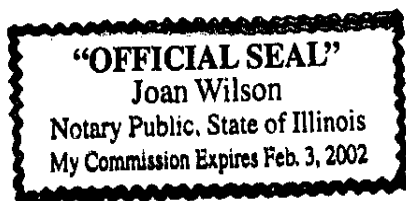
IN WITNESS WHEREOF, American National Bank and Trust Company of Chicago, not personally but as Trustee as aforesaid, has caused these presents to be signed by one of its Officers the day and year first above written.

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

By Annette N. Brusca  
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 (date) 23rd day of June, 1999.



Joan Wilson  
NOTARY PUBLIC

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