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Cook County Recorder 83.50



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For Recorder's Use Only

**MORTGAGE AND SECURITY AGREEMENT**

**THIS MORTGAGE AND SECURITY AGREEMENT** dated as of July 1, 1999 (this "Mortgage"), from LaSalle Bank National Association, as Successor to Exchange National Bank of Chicago, as Trustee under Trust Agreement dated January 15, 1979, and known as Trust Number 10-34881-09 ("Mortgage"), to COLE TAYLOR BANK, an Illinois banking corporation (the "Mortgagee");

WITNESSETH:

WHEREAS, Briskin Manufacturing Company, an Illinois corporation ("Company") requested that The Industrial Development Board of Wilson County, Tennessee (the "Issuer"), issue \$6,500,000 aggregate principal amount of the Issuer's Industrial Development Revenue Bonds, Series 1999 (Briskin Manufacturing Company Project) (the "Bonds") pursuant to an Indenture of Trust dated as of July 1, 1999, between the Issuer and Cole Taylor Bank, an Illinois banking corporation, as trustee, and that the Issuer loan the proceeds from the sale of the Bonds to the Company pursuant to a Loan Agreement dated as of July 1, 1999, by and among the Issuer, Briskin-Kaplan Investments, Ltd. and the Company, in order to finance the acquisition, construction and installation of land, improvements to land and equipment for use by the Company in its business (the "Project"); and

This instrument prepared by and return to  
Martin W. Salzman  
Schwartz, Cooper, Greenberger and Krauss  
180 N. LaSalle St.  
Chicago, Illinois 60601

Permanent Index Number:  
19-08-202-003  
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Common Address:  
5800 W. 51st. Street  
Chicago, Illinois 60638

Property of Cook County Clerk's Office

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WHEREAS, to secure the timely payment of principal of and interest on the Bonds, Briskin has requested that the Mortgagee cause LaSalle Bank National Association to issue an irrevocable, transferable direct pay letter of credit in an amount not exceeding \$6,596,165 (the "Letter of Credit"), such Letter of Credit to be issued under and pursuant to the provisions of a Reimbursement Agreement dated as of July 1, 1999 (the "Reimbursement Agreement") (capitalized terms not otherwise defined herein shall have the same meanings as in the Reimbursement Agreement), by and among Briskin and the Mortgagee;

Mortgagor is the landlord of Briskin of the Premises (hereafter defined), has a direct financial interest in the success of Briskin and desires to mortgage the Premises as additional consideration for the financing provided to Briskin by Mortgagee;

NOW, THEREFORE, in order to induce the Mortgagee to enter into the Reimbursement Agreement and to cause the issuance of the Letter of Credit and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Mortgagor hereby grants, bargains, sells, conveys and mortgages to the Mortgagee and its successors and assigns forever, under and subject to the terms and conditions hereinafter set forth, all of the Mortgagor's right, title and interest in and to the real property located in the County of Cook and State of Illinois, described in Exhibit A attached hereto and by this reference incorporated herein, including all improvements now and hereafter located thereon;

TOGETHER WITH all right, title and interest of the Mortgagor, now owned or hereafter acquired, in and to the following:

- (a) All rents, issues, profits, royalties and income with respect to the said real estate and improvements and other benefits derived therefrom, subject to the right, power and authority given to the Mortgagor to collect and apply same;
- (b) All leases or subleases covering the said real estate and improvements or any portion thereof now or hereafter existing or entered into, including, without limitation, all cash or security deposits, advance rentals, and deposits or payments of similar nature, and any and all guarantees of the lessee's obligations under any of such leases and subleases;
- (c) All privileges, reservations, allowances, hereditaments and appurtenances belonging or pertaining to the said real estate and improvements and all rights and estates in reversion or remainder and all other interests, estates or other claims, both in law and in equity, which the Mortgagor now has or may hereafter acquire in the said real estate and improvements;
- (d) All easements, rights-of-way and rights used in connection with the said real estate and improvements or as a means of ingress and egress thereto, and all tenements, hereditaments and appurtenances thereof and thereto, and all water rights and

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shares of stock evidencing the same;

(e) Any land lying within the right-of-way of any street, open or proposed, adjoining the said real estate and improvements, and any and all sidewalks, alleys and strips and gores of land adjacent to or used in connection with the said real estate and improvements;

(f) Any and all buildings and improvements now or hereafter erected on the said real estate, including, but not limited to, all the fixtures, attachments, appliances, equipment, machinery, and other articles attached to said buildings and improvements;

(g) All materials intended for construction, reconstruction, alteration and repairs of the said real estate and improvements, all of which materials shall be deemed to be included within the said real estate and improvements immediately upon the delivery thereof to the said real estate;

(h) All fixtures attached to or contained in and used in connection with the said real estate and improvements, including, but not limited to, all machinery, motors, elevators, fittings, radiators, awnings, shades, screens, and all plumbing, heating, lighting, ventilating, refrigerating, incinerating, air-conditioning and sprinkler equipment and fixtures and appurtenances thereto; and all items of furniture, furnishings, equipment and personal property used or useful in the operation of the said real estate and improvements; and all renewals, substitutions and replacements for any or all of the foregoing, and all proceeds therefrom, whether or not the same are or shall be attached to the said real estate and improvements in any manner; it being mutually agreed, intended and declared that all the aforesaid property placed by the Mortgagor on and in the said real estate and improvements shall, so far as permitted by law, be deemed to form a part and parcel of the real estate and for the purpose of this Mortgage to be real estate and covered by this Mortgage; and as to any of the aforesaid property which does not so form a part and parcel of the real estate or does not constitute a "fixture" (as such term is defined in the Uniform Commercial Code of Illinois), this Mortgage is deemed to be a security agreement under the Uniform Commercial Code of Illinois for the purpose of creating hereby a security interest in such property, which the Mortgagor hereby grants to the Mortgagee as secured party; and

(i) All the estate, interest, right, title and other claims or demands, including claims or demands with respect to any proceeds of insurance related thereto, in the said real estate and improvements or personal property and any and all awards made for the taking by eminent domain, or by any proceeding or purchase in lieu thereof, of the whole or any part of the said real estate and improvements or personal property, including without limitation any awards resulting from a change of grade of streets and awards for severance damages;

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the said real estate and improvements and the property and interests described in (a) through (i) above being collectively referred to herein as the "Premises;" and as to any portion of the Premises constituting property subject to the Uniform Commercial Code of Illinois, this Mortgage shall be deemed to be a security agreement under such Code for the purpose of creating hereby a security interest in such equipment and portion of the Premises, which the Mortgagor as debtor hereby grants to the Mortgagee as secured party.

TO HAVE AND TO HOLD the same unto the Mortgagee and its successors and assigns forever, for the purposes and uses herein set forth.

FOR THE PURPOSE OF SECURING the following:

- (a) The full and prompt payment of all amounts required to be paid by Briskin pursuant to the Reimbursement Agreement;
- (b) The timely performance and observance by Briskin of all of its other covenants, agreements and other obligations under the Reimbursement Agreement;
- (c) Performance and observance by the Mortgagor of all of the terms, covenants and provisions of this Mortgage; and
- (d) Performance and observance by the obligors thereto of all of the terms, covenants and provisions of the other Bond Documents (as defined in Article I hereof);
- (e) Payment of all sums advanced by the Mortgagee to perform any of the terms, covenants and provisions of this Mortgage or any of the other Bond Documents, or otherwise advanced by the Mortgagee pursuant to the provisions hereof or any of such other documents to protect the property hereby mortgaged and pledged;
- (f) Payment of any and all future and further advances made by Mortgagee pursuant to the terms of the Reimbursement Agreement or any of the other Bond Documents, all of which future and further advances shall have, to the extent permitted by law, the same priority as if advanced at the date of this Mortgage; and
- (g) Performance and observance of all of the terms, covenants and provisions of any other instrument given to evidence or further secure the payment and performance of any indebtedness hereby secured or any obligation secured hereby.

PROVIDED, HOWEVER, that if Briskin shall fully perform all of its covenants and obligations under the Reimbursement Agreement and shall have no further obligation thereunder, and shall pay all sums herein provided for or secured hereby, and if the Mortgagor well and truly keeps and performs all of the covenants herein contained, and if the Letter of Credit shall be surrendered and canceled and the Mortgagee shall have no further liability or obligation

thereunder or with respect thereto, then this Mortgage shall be released at the cost of the Mortgagor, otherwise to remain in full force and effect

TO PROTECT THE SECURITY OF THIS MORTGAGE AND SECURITY AGREEMENT, THE MORTGAGOR HEREBY COVENANTS AND AGREES AS FOLLOWS:

ARTICLE I

DEFINITIONS

Section 1.1. Definitions. The terms defined in this Section (except as otherwise expressly provided or unless the context otherwise requires) for all purposes of this Mortgage shall have the respective meanings specified in this Section.

“Assignment of Rents” means (i) the Assignment of Rents and Leases dated as of July 1, 1999, from Cole Taylor Bank, as Successor Trustee to Harris Trust and Savings Bank, not personally, but solely as Trustee under Trust Agreement dated August 31, 1977 and known as Trust Number 37458 to the Mortgagee, (ii) the Assignment of Rents and Leases dated as of July 1, 1999 from LaSalle Bank National Association, as successor Trustee to Exchange National Bank of Chicago, not personally, but solely as Trustee under Trust Agreement dated January 15, 1979 and known as Trust Number 10-34881-07 to the Mortgagee, and (iii) the Assignment of Rents and Leases dated as of July 1, 1999, from the Briskin-Kaplan Investments, Ltd. to the Mortgagee.

“Bonds” means the Issuer’s Industrial Development Revenue Bonds Series 1999 (Briskin Manufacturing Project) issued under the Indenture.

“Bond Counsel” means the counsel who rendered the opinion as to the tax-exempt status of interest on the Bonds or other nationally recognized municipal bond counsel mutually acceptable to the Mortgagee.

“Bond Documents” means Reimbursement Agreement, the Letter of Credit, the Bonds, the Indenture, the Loan Agreement, the Mortgages, the Assignment of Rents, the Trust Deed, the Assignment of Rents relating to the Trust Deed, the Guaranty, the Mortgagor Security Agreement, the Company Security Agreement, the Building Leases, the Environmental Indemnity Agreement, the Pledge Agreement and any other agreement or instrument relating the Reimbursement Agreement or to the transactions contemplated thereby.

“Building Leases” means (i) that certain Industrial Building Lease (as amended from time to time dated as of August 31, 1977, by and between either Harris Trust and Savings Bank, as Trustee under Trust Number 37458 or 51st and Monitor Investments, Ltd., as landlord and the Company, as tenant covering, among other things the real estate commonly known as 5852 W.

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51st Street, Chicago, Illinois, (ii) that certain Industrial Building Lease dated as of February 22, 1979, by and between either Exchange National Bank of Chicago, as Trustee under Trust Number 34881 or 51st and Menard Investments, Ltd., as landlord and the Company, as tenant covering, among other things the real estate commonly known as 5800 W. 51st Street, Chicago, Illinois, and (iii) that certain Industrial Building Lease dated as of May 1, 1982, by and between Briskin-Kaplan Investments, Ltd., Mortgagor as landlord and the Company, as tenant covering, among other things the real estate commonly known as 712 Briskin Lane, Lebanon, Tennessee.

“Company” means Briskin Manufacturing Company, a corporation organized and existing under the laws of the State of Illinois.

“Environmental Indemnity Agreement” means the Environmental Indemnity Agreement from 51<sup>st</sup> and Menard Investments, Ltd. and the Company in favor of the Mortgagee dated as of July 1, 1999.

“Equipment” means all equipment, machinery, fixtures and other personal property acquired with proceeds of the Bonds.

“Event of Default” when used in reference to this Mortgage means an Event of Default specified in Section 4.1 hereof.

“Hazardous Material” means any substance, material, waste, gas or particulate matter which is regulated by any local governmental authority, the State of Tennessee or the United States Government including, but not limited to, any material or substance which is (i) defined as a “hazardous waste,” “hazardous material,” “hazardous substance,” “extremely hazardous substance” or “restricted hazardous waste” under any provision of Tennessee law, (ii) petroleum, (iii) asbestos, (iv) polychlorinated biphenyl, (v) radioactive material, (vi) designated as “hazardous substance” pursuant to Section 311 of the Clean Water Act, 33 U.S.C. §§ 1251 *et seq.*, (vii) defined as a “hazardous waste” pursuant to Section 1004 of the Resource Conservation and Recover Act, 42 U.S.C. §§ 6901 *et seq.*, (viii) defined as a “hazardous substance” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601 *et seq.*, or (ix) defined as a “toxic chemical,” “hazardous chemical” or “extremely hazardous chemical” pursuant to the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. §§ 11001 *et seq.*

“Indenture” means the Indenture of Trust dated as of July 1, 1999, between the Issuer and the Trustee.

“Issuer” has the meaning assigned to that term in the first recited paragraph.

“Letter of Credit” has the meaning assigned to that term in the first recited paragraph.

“Loan Agreement” means the Loan Agreement dated as of July 1, 1999, by and among

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the Issuer and the Company and Briskin-Kaplan Investments, Ltd.

"Mortgages" means (i) the Mortgage dated as of July 1, 1999, from Cole Taylor Bank, as Successor Trustee to Harris Trust and Savings Bank, not individually, but as Trustee under Trust Agreement dated August 31, 1977 and known as Trust Number 37458, to the Mortgagee, (ii) the Mortgage dated as of July 1, 1999, from LaSalle Bank National Association, as successor to Exchange National Bank of Chicago, as Trustee under Trust Number 10-34881-09 to the Mortgagee, and (iii) the Deed of Trust dated as of July 1, 1999, from Briskin-Kaplan Investments, Ltd. to Charles Wray, as trustee for the benefit of the Mortgagee.

"Mortgagee" means Cole Taylor Bank, an Illinois banking corporation.

"Mortgagor" has the meaning assigned to that term in the first paragraph.

"Permitted Encumbrances" means (i) a prior mortgage granted to Cole Taylor Bank, (ii) this Mortgage; (iii) the Assignment of Rents; (iv) Uniform Commercial Code financing statements reflecting the Mortgage as secured party; (v) the Building Lease and leases of the Premises entered into after the date of the recording of this Mortgage, provided same have been entered into in accordance with the provisions of Section 3.1 of this Mortgage; (vi) liens for ad valorem taxes and special assessments not then delinquent; (vii) liens, security interests or other encumbrances approved from time to time by the Mortgagee in writing; and (viii) the additional matters set forth in Exhibit B attached hereto.

"Pledge Agreement" means the Pledge and Security agreement dated as July 1, 1999, from Briskin-Kaplan Investments, Ltd. and the Company to Mortgagee.

"Premises" means the real estate described in Exhibit A attached hereto and all improvements now and hereafter located thereon, and all other property, rights and interests described in the foregoing granting clauses of this Mortgage.

"Prime Rate" means at any time and from time to time the rate of interest per annum most recently announced or published by the Mortgagee as its Prime Rate or otherwise named equivalent rate of interest, which rate of interest shall not necessarily be the lowest rate of interest which the Mortgagee charges. Any change in the Prime Rate shall take effect on the day of the announcement thereof by the Mortgagee.

"Project" means that land, those buildings and those items of improvement and equipment acquired, constructed or installed or to be acquired, constructed or installed which are financed by the proceeds of the sale of the Bonds.

"Reimbursement Agreement" means the Reimbursement Agreement dated as of July 1, 1999, by and among the Company and Briskin-Kaplan Investments, Ltd. and the Mortgagee.

“Security Agreement” means the Security Agreement dated as of July 1, 1999 from Briskin-Kaplan Investments, Ltd. to the Mortgagee.

“Trustee” means Cole Taylor Bank, an Illinois banking corporation, and its successors and any corporation or association resulting from or surviving any consolidation or merger to which it or its successors may be a party, and any successor trustee at the time serving as such under the Indenture.

## ARTICLE II

### COVENANTS AND AGREEMENTS OF MORTGAGOR

Section 2.1. Payment of Indebtedness; Performance of Obligations. The Mortgagor covenants and agrees that it will pay or cause to be paid when due all sums payable pursuant to the Reimbursement Agreement and all other indebtedness hereby secured as described in the foregoing granting clauses of this Mortgage, including, but not limited to, all charges, fees and all other sums to be paid by the Mortgagor as provided in the Bond Documents, and that it will duly and punctually perform, observe and comply with or cause to be punctually performed, observed and complied with all of the terms, provisions and conditions herein and in the other Bond Documents provided to be performed and observed by the Mortgagor.

Section 2.2. Maintenance, Repair, Alterations. The Mortgagor covenants and agrees that it will:

- (a) keep the Premises in good condition and repair, ordinary wear and tear excepted;
- (b) not remove, demolish or substantially alter, or suffer or permit to be removed, demolished or substantially altered (except such alterations as may be required by laws, ordinances or governmental regulations) any of the improvements which are a material part of the Premises;
- (c) except as otherwise provided herein, promptly repair and restore any portion of the Premises which may become damaged or be destroyed so as to be of at least equal value and of substantially the same character as prior to such damage or destruction;
- (d) subject to Section 2.10(b) hereof, pay when due all claims for labor performed and materials furnished to and for the Premises;
- (e) comply in all material respects with all laws, ordinances, regulations, covenants, conditions and restrictions now or hereafter affecting the Premises or any part thereof or requiring any alterations or improvements;



(f) not commit or permit any waste or deterioration of the Premises or any portion thereof;

(g) keep and maintain the Premises and abutting grounds, sidewalks, roads, parking and landscape areas in good and neat order and repair and free of nuisance;

(h) not commit, suffer or permit any act to be done in or upon the Premises in violation of any law, ordinance or regulation;

(i) not initiate or acquiesce in any zoning change or reclassification of the Premises;

(j) subject to Section 2.10(b) hereof, keep the Premises free and clear of all liens and encumbrances of every sort except Permitted Encumbrances; and

(k) promptly notify the Mortgagee of any damage to or destruction of the Premises, or any part thereof, when such damage or destruction amounts to \$50,000 or more, or any other event or condition which might materially and adversely impair, affect or reduce the integrity of the Premises or its intended use or value.

Section 2.3. Required Insurance. The Mortgagor shall at all times provide, maintain and keep in force the following policies of insurance:

(a) Insurance against loss or damage to any improvements on the Premises by fire and any of the risks covered by insurance of the type now known as "fire and extended coverage", in an amount not less than the full replacement cost thereof (exclusive of the cost of excavations, foundations and footings below the lowest basement floor), and with not more than a \$10,000 deductible from the loss payable for any casualty.

(b) During the course of any construction or repair at the Premises, builder's risk insurance against all risks of physical loss, on a completed value basis, including collapse and transit coverage, with a deductible not to exceed \$10,000, in a reporting form, covering the total value of work performed and equipment, supplies and materials furnished, and containing the "permission to occupy upon completion of work" endorsement.

(c) Boiler and machinery insurance covering any pressure vessels, air tanks, boilers, machinery, pressure piping, heating, air conditioning and elevator equipment and escalator equipment located on the Premises, and insurance against loss of occupancy or use arising from any breakdown therein, all in such amounts as are satisfactory to the Mortgagee.

(d) If the Premises are located in an area that has been identified by the United States Department of Housing and Urban Development as an area having special flood hazards and if the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, flood insurance in an amount at least equal to the replacement cost of any improvements on the Premises or to the maximum limit of coverage made available with respect to the particular type of property under the National Flood Insurance Act of 1968, whichever is less.

(e) Insurance against loss or damage to the Equipment and other personal property of the Mortgagor.

(f) Commercial general liability insurance, including coverage for elevators and escalators, if any, on the Premises and completed operations coverage for two years after any construction or repair at the Premises has been completed, on an occurrence basis against claims for personal injury, including without limitation bodily injury, death or property damage occurring on, in or about the Premises and the adjoining streets, sidewalks and passageways, such insurance to afford immediate minimum protection to a limit of not less than \$10,000,000 with respect to any one occurrence.

(g) Workers' compensation insurance in accordance with the requirements of Illinois law.

(h) Such other insurance, and in such amounts, as may from time to time be required by the Mortgagee against the same or other hazards.

All policies of insurance required by terms of this Mortgage shall contain an endorsement or agreement by the insurer that any loss shall be payable in accordance with the terms of such policy notwithstanding any act or negligence of the Mortgagor, the Mortgagee or any other person which might otherwise result in forfeiture of said insurance and the further agreement of the insurer waiving all rights of set-off, counterclaim or deductions against the insured. All policies of insurance required by the terms of this Mortgage shall be issued by financially responsible insurance companies qualified to do business in the State of Illinois. The policies of insurance referred to in (a) through (e) above shall insure the Mortgagor and the Mortgagee, as their respective interests may appear, and shall have attached thereto a mortgagee's loss payable endorsement for the benefit of the Mortgagee. The policy of insurance referred to in (f) above shall name the Mortgagee as an additional insured. The original of all required policies of insurance or certificates thereof reasonably acceptable to the Mortgagee shall be furnished to the Mortgagee. At least thirty (30) days prior to the expiration of each such policy, the Mortgagee shall be furnished with evidence of the payment of the premium and the issuance of a new or a renewal policy continuing insurance in force as required by this Mortgage. Each policy of insurance required by this Mortgage shall contain a provision that such policy will not be canceled or materially amended, including any reduction in the scope or limits of coverage, without at least thirty (30) days prior written notice to the Mortgagee.

The proceeds of the insurance referred to in (a) through (e) above shall be deposited with the Mortgagee and applied in accordance with Section 2.7 of this Mortgage. The proceeds of the insurance referred to in (f) and (g) above shall be applied to the satisfaction of the claim giving rise to the payment of such proceeds.

Section 2.4. Taxes and Impositions.

(a) The Mortgagor agrees to pay or cause to be paid, at least five (5) days prior to delinquency, all real property taxes and assessments, general and special, and all other taxes and assessments of any kind or nature whatsoever, including without limitation any non-governmental levies or assessments such as maintenance charges, owner association dues or charges or fees, levies or charges resulting from covenants, conditions and restrictions affecting the Premises, which are assessed or imposed upon the Premises, or become due and payable, and which create, may create or appear to create a lien upon the Premises, or any part thereof (all of which taxes, assessments and other governmental charges and non-governmental charges of the above-described or like nature are hereinafter referred to as "Impositions"); provided however, that if, by law, any such Imposition is payable, or at the option of the taxpayer may be paid, in installments, the Mortgagor may pay the same together with any accrued interest on the unpaid balance of such Imposition in installments as the same become due and before any fine, penalty, interest or cost may be added thereto for the nonpayment of any such installment and interest.

(b) The Mortgagor shall furnish to the Mortgagee within thirty (30) days after the date upon which any Imposition is due and payable by the Mortgagor, official receipts of the appropriate taxing authority, or other proof reasonably satisfactory to the Mortgagee, evidencing the payment thereof.

(c) The Mortgagor shall have the right before any delinquency occurs to contest or object to the amount or validity of any Imposition by appropriate legal proceedings properly instituted and prosecuted in such manner as shall stay the collection of the contested Impositions and prevent the sale or forfeiture of the Premises to collect the same; provided that no such contest or objection shall be deemed or construed in any way as relieving, modifying or extending the Mortgagor's covenants to pay any such Imposition at the time and in the manner provided in this Section unless the Mortgagor has given prior written notice to the Mortgagee of the Mortgagor's intent to so contest or object to an Imposition, and unless, at the Mortgagee's sole option, (i) the Mortgagor shall demonstrate to the Mortgagee's reasonable satisfaction that legal proceedings instituted by the Mortgagor contesting or objecting to such impositions shall conclusively operate to prevent the sale or forfeiture of the Premises, or any part thereof, to satisfy such Imposition prior to final determination of such proceedings; and/or (ii) the Mortgagor shall furnish a good and sufficient bond or surety as requested by and reasonably satisfactory to the Mortgagee, or a good and sufficient undertaking as may be required or permitted by law to accomplish a stay of any such sale or forfeiture of the Premises during the pendency of such contest, adequate fully to pay all such contested Impositions and all interest and penalties upon the adverse determination of such contest.

Section 2.5. Utilities. The Mortgagor shall pay or cause to be paid when due all utility charges which are incurred by the Mortgagor or others for the benefit of or service to the Premises or which may become a charge or lien against the Premises for gas, electricity, water or sewer services furnished to the Premises and all other assessments or charges of a similar nature, whether public or private, affecting the Premises or any portion thereof, whether or not such taxes, assessments or charges are liens thereon.

Section 2.6. Actions by Mortgagee to Preserve Premises. Should the Mortgagor fail to make any payment or to do any act as and in the manner provided herein, the Mortgagee in its own discretion, without obligation so to do and without releasing the Mortgagor from any obligation, may make or do the same in such manner and to such extent as it may deem necessary to protect the security hereof. In connection therewith (without limiting its general powers), the Mortgagee shall have and is hereby given the right, but not the obligation, (i) to enter upon and take possession of the Premises; (ii) to make additions, alterations, repairs and improvements to the Premises which it may consider necessary and proper to keep the Premises in good condition and repair; (iii) to appear and participate in any action or proceeding affecting or which may affect the Premises, the security hereof or the rights or powers of the Mortgagee; (iv) to pay any Imposition (as defined in Section 2.4 hereof) asserted against the Premises and to do so according to any bill, statement or estimate procured from the appropriate office without inquiry into the accuracy of the bill, statement or estimate or into the validity of any Imposition; (v) to pay, purchase, contest or compromise any encumbrance, claim, charge, lien or debt which in the judgment of the Mortgagee may affect or appears to affect the Premises or the security of this Mortgage or which may be prior or superior hereto; and (vi) in exercising such powers, to pay necessary expenses, including employment of and payment of compensation to counsel or other necessary or desirable consultants, contractors, agents and other employees. The Mortgagor irrevocably appoints the Mortgagee its true and lawful attorney in fact, at the Mortgagee's election, to do and cause to be done all or any of the foregoing in the event the Mortgagee shall be entitled to take any or all of the action provided for in this Section. The Mortgagor shall immediately, upon demand therefor by the Mortgagee, pay all costs and expenses incurred by the Mortgagee in connection with the exercise by the Mortgagee of the foregoing rights, including without limitation, costs of evidence of title, court costs, appraisals, surveys and attorneys' fees, all of which shall constitute so much additional indebtedness secured by this Mortgage immediately due and payable, with interest thereon at a rate which is 3% above the Prime Rate.

Section 2.7. Damage, Destruction and Condemnation.

(a) In the event that during the term of this Mortgage, the Premises or any part thereof is destroyed (in whole or in part) or is damaged by fire or other casualty, or title to or any interest in, or the temporary use of, the Premises or any part thereof or the interest of the Mortgagor in the Premises or any part thereof shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, the Mortgagor shall, within sixty (60) days thereafter, (i) commence to repair, restore or replace the property damaged, destroyed or condemned, or (ii) furnish to the

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Mortgagee a certificate by a licensed architect and the Mortgagor reasonably acceptable to the Mortgagee, to the effect that property damaged, destroyed or condemned is not essential to the use or possession of the Project and that the failure to repair, restore or replace such property will not reduce the value of the Premises; provided, however, that with respect to the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, the sixty (60) day period referred to hereinabove shall commence on the date on which the said governmental authority, pursuant to the power of eminent domain, shall exercise such power by the taking of possession of all or a portion of the Premises or the proscribing of the use and/or possession of all or a portion of the Premises by the Mortgagor.

(b) The proceeds of any insurance or condemnation award payable as a result of any of the events referred to in this Section shall be deposited with the Mortgagee and applied as described in this subsection (b). If the Mortgagor shall elect to proceed as described in clause (i) in subsection (a) of this Section, the repair, restoration and replacement of the property damaged, destroyed or condemned shall be diligently and continuously prosecuted by the Mortgagor and, unless an Event of Default (or an event which with the passage of time or the giving of notice or both will become an Event of Default) has occurred and is continuing or unless the immediately following sentence is applicable, all proceeds of insurance and condemnation awards shall be disbursed by the Mortgagee to pay the costs of such repair, restoration or replacement in the manner provided in the Loan Agreement with respect to disbursements from a construction fund created thereunder. If the Mortgagor shall elect to proceed as described in clause (i) of subsection (a) and the proceeds of such insurance or condemnation award shall not exceed \$30,000, such proceeds shall be paid to the Mortgagor for the sole purpose of effecting such repairs, restorations and replacements. If the Mortgagor shall elect to proceed as described in clause (ii) in subsection (a), or if the Mortgagor shall elect to proceed as described in clause (i) but less than all of the proceeds of any such insurance or condemnation award is used to pay such costs of repair, restoration or replacement of the property damaged, destroyed or condemned, the proceeds of any such insurance or condemnation award, or the unexpended balance thereof, as the case may be, shall be paid to the Mortgagee and held or applied by the Mortgagee to the redemption of Bonds in accordance with the Indenture.

(c) As a condition to the disbursement of any proceeds deposited with the Mortgagee for the purpose of paying the costs of repairing, restoring or replacing all or any portion of the Premises, the Mortgagee may require that:

(i) the Mortgagor deliver to the Mortgagee an opinion of Bond Counsel that the intended use of such proceeds will not adversely effect the tax exempt character of interest on the Bonds:

(ii) the Mortgagor deliver to the Mortgagee, for its review and approval, plans and specifications for the repairs, restorations and replacements to be effected by the Mortgagor, which plans and specifications shall be prepared by a licensed architect approved by the Mortgagee;

(iii) the architect preparing the plans and specifications for the repairs, restorations and replacements to be affected by the Mortgagor certify to the Mortgagee that proceeds from time to time on deposit with the Mortgagee are sufficient to complete such repairs, restorations and replacements; and

(iv) all proceeds be disbursed through and upon the terms of a construction loan escrow agreement with a title insurance company, such agreement to be in form and substance reasonably satisfactory to the Mortgagee.

Section 2.8. Inspection of Premises. The Mortgagee, or its agents, representatives or workmen, are authorized to enter at any reasonable time, during normal business hours following reasonable prior notice to Mortgagor upon or in any part of the Premises for the purpose of inspecting the same and for the purpose of performing any of the acts it is authorized to perform under the terms of this Mortgage or any of the other Bond Documents.

Section 2.9. Indemnification of Issuer and Mortgagee. The Mortgagor agrees to indemnify and save harmless the Issuer and the Mortgagee against any and all losses, injuries, claims, damages or injuries to persons or property, demands and expenses, including legal expense, of whatsoever kind and nature and by whomsoever made arising from or in any manner directly or indirectly growing out of (i) the use and possession or nonuse of the Premises or the Equipment or (ii) any repairs, replacements or alterations, of, on or to the Premises or the Equipment.

Section 2.10. Title, Liens and Conveyances.

(a) The Mortgagor represents that it holds good and marketable title to the Premises, subject only to Permitted Encumbrances.

(b) Except for Permitted Encumbrances, the Mortgagor shall not create, suffer or permit to be created or filed against the Premises, or any part thereof or interest therein, any mortgage lien or other lien, charge or encumbrance, either superior or inferior to the lien of this Mortgage. The Mortgagor shall have the right to contest in good faith the validity of any such lien, charge or encumbrance, provided the Mortgagor shall first deposit with the Mortgagee a bond, title insurance or other security reasonably satisfactory to the Mortgagee in such amounts or form as the Mortgagee shall reasonably require; provided further that the Mortgagor shall thereafter diligently proceed to cause such lien, encumbrance or charge to be removed and discharged. If the Mortgagor shall fail to discharge any such lien, encumbrance or charge, then, in addition to any other right or remedy of the Mortgagee, the Mortgagee may, but shall not be obligated to, discharge the same, either by paying the amount claimed to be due, or by procuring the discharge of such lien by depositing in court a bond for the amount claimed or otherwise giving security for such claim, or in such manner as is or may be prescribed by law and any amounts expended by the Mortgagee in so doing shall be so much additional indebtedness secured by this Mortgage. Except for Permitted Encumbrances and liens, charges and

encumbrances being contested as provided above, in the event that the Mortgagor shall suffer or permit any superior or junior lien, charge or encumbrance to be attached to the Premises, the Mortgagee, at its option, shall have the unqualified right to exercise any or all of the remedies available to it upon the occurrence of an Event of Default including, without limitation, the right to serve notices upon the Trustee causing an acceleration of the maturity of the Bonds.

(c) In the event that the Mortgagor shall sell, transfer, convey or assign the title to all or any portion of the Premises, whether by operation of law, voluntarily, or otherwise, or the Mortgagor contracts to do any of the foregoing, the Mortgagee, at its option, shall have the unqualified right to exercise any or all of the remedies available to it upon the occurrence of an Event of Default including, without limitation, the right to serve notices upon the Trustee causing an acceleration of the maturity of the Bonds.

(d) Any waiver by the Mortgagee of the provisions of this Section shall not be deemed to be a waiver of the right of the Mortgagee to insist upon strict compliance with the provisions of this Section in the future.

Section 2.11. Taxes Affecting Mortgage.

(a) If at any time any federal, State or municipal law shall require any documentary stamps or other tax hereon, or shall require payment of any tax upon the indebtedness secured hereby, then the Mortgagor, unless prohibited by law, shall purchase such stamps or pay such tax, including interest and penalties thereon, or reimburse the Mortgagee therefor.

(b) In the event of the enactment after the date of this Mortgage of any law of the State in which the Premises are located deducting from the value of the Premises for the purpose of taxation any lien thereon, or imposing upon the Mortgagee the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by the Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or the Mortgagee's interest in the Premises, or the manner of collection of taxes, so as to affect this Mortgage or the debt secured hereby or the holder hereof, then, and in any such event, the Mortgagor, upon demand by the Mortgagee, shall pay such taxes or assessments, or reimburse the Mortgagee therefor.

(c) If, in the opinion of counsel for the Mortgagee, (i) it might be unlawful for the Mortgagor to make, or for the Mortgagee to require the Mortgagor to make, any payment required to be made pursuant to subsections (a) or (b) above, or (ii) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then, and in such event, the Mortgagor shall not be required to make such payment but an Event of Default shall be deemed to have occurred and the Mortgagee may elect, by notice in writing given to the Mortgagor, to exercise any or all of the remedies available to it upon the occurrence of an Event of Default including, without limitation, the right to serve notices upon the Trustee causing an acceleration of the maturity of the Bonds. Notwithstanding the foregoing, it is

understood and agreed that the Mortgagor is not obligated to pay any portion of Mortgagee's federal or State income tax.

Section 2.12. Environmental Matters.

(a) Except as previously disclosed to Mortgagee in an environmental assessment report of the Property, the Mortgagor hereby represents and warrants to the Mortgagee that the Mortgagor, the Company, nor any of their respective affiliates or subsidiaries, nor, to the best of the Mortgagor's knowledge, any other person or entity, has ever caused or permitted any Hazardous Material to be placed, held, located or disposed of on, under or at (i) the Premises or any part thereof, or (ii) any other real property in which the Mortgagor, the Company, or any of their respective affiliates or subsidiaries holds any estate or interest whatsoever, except when used in the ordinary course of business in compliance with all applicable laws (including, without limitation, any property owned by a land trust the beneficial interest in which is owned, in whole or in part, by any of their affiliates or subsidiaries), and that none of the property described above has ever been used by their affiliates or subsidiaries, or, to the best of the Mortgagor's knowledge, by any other person or entity, as a treatment, storage or disposal site (whether permanent or temporary) for any Hazardous Material, and that there are no underground storage tanks located on the Premises.

(b) Without limitation on any other provision hereof, the Mortgagor hereby agrees to indemnify and hold the Mortgagee harmless from and against any and all losses, liabilities, damages, injuries, costs, expenses and claims of any kind whatsoever (including, without limitation, any losses, liabilities, damages, injuries, costs, expenses or claims asserted or arising under any of the following (collectively, "Environmental Laws"): the Comprehensive Environmental Response, Compensation, and Liability Act, any so-called "Superfund" or "Superlien" law, or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree, now or hereafter in force, regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Material) paid, incurred, suffered by or asserted against the Mortgagee as a direct or indirect result of any of the following, regardless of whether or not caused by, or within the control of, the Mortgagor, the Company or any of their affiliates or subsidiaries: (i) the presence of any Hazardous Material on or under, or the escape, seepage, leakage, spillage, discharge, emission, discharging or release of any Hazardous Material from (A) the Premises or any part thereof, or (B) any other real property in which Mortgagor, the Company or any of their affiliates or subsidiaries holds any estate or interest whatsoever (including, without limitation, any property owned by a land trust the beneficial interest in which is owned, in whole or in part, by Mortgagor, the Company or any of their affiliates or subsidiaries), or (ii) any liens against the Premises permitted or imposed by any Environmental Laws, or any actual or asserted liability or obligations of Mortgagor, the Company or any of their affiliates or subsidiaries under any Environmental Laws, or (iii) any actual or asserted liability or obligations of the Mortgagee or any of its affiliates or subsidiaries under any Environmental Laws relating to the Premises.



(c) The representations, warranties, covenants, indemnities and obligations provided for in this Section shall be continuing and shall survive the payment, performance, satisfaction, discharge, cancellation, termination, release and foreclosure of this Mortgage; provided, however, that such representations, warranties, covenants, indemnities and obligations shall not apply with respect to Hazardous Materials which are first placed on the Premises by the Mortgagee or its agents or placed on the Premises on or after the date on which the Mortgagee or any other party obtains possession of the Premises pursuant to an exercise by the Mortgagee of its remedies under this Mortgage or any of the other Bond Documents or as a result of a conveyance of title to the Premises by the Mortgagor to the Mortgagee or such other party in lieu of such exercise of remedies.

Section 2.13. Estoppel Letters. The Mortgagor shall furnish from time to time, within fifteen (15) days after the Mortgagee's request, a written statement, duly acknowledged, of the amount due upon this Mortgage and whether any alleged offsets or defenses exist against the indebtedness secured by this Mortgage.

### ARTICLE III

#### LEASES; DECLARATION OF SUBORDINATION TO LEASES

Section 3.1. Leases. Except for the lease to the Company (the "Building Lease"), Mortgagor agrees (i) that it will not enter into any lease of the Premises or any portion thereof without the prior written consent of the Mortgagee; (ii) that it will at all times duly perform and observe all of the terms, provisions, conditions and agreements on its part to be performed and observed under any and all leases of the Premises or any portion thereof, including, without limitation, the Building Lease, and shall not suffer or permit any default or Event of Default on the part of the lessor to exist thereunder; (iii) that it will not agree or consent to, or suffer or permit, any termination, modification, amendment or assignment of, or any sublease under, any lease of the Premises, or any portion thereof, including, without limitation, the Building Lease without the prior written consent of the Mortgagee; and (iv) except for security deposits not to exceed one month's rent for any one lessee, that it will not collect any rent for more than one month in advance of the date same is due. Nothing herein contained shall be deemed to obligate the Mortgagee to perform or discharge any obligation, duty or liability of lessor under any lease of the Premises, and the Mortgagor shall and does hereby indemnify and hold the Mortgagee harmless from any and all liability, loss or damage which the Mortgagee may or might incur under any leases of the Premises; and any and all such liability, loss or damage incurred by the Mortgagee, together with the costs and expenses, including reasonable attorneys' fees, incurred by the Mortgagee in the defense of any claims or demands therefor (whether successful or not), shall be so much additional indebtedness secured by this Mortgage, and the Mortgagor shall reimburse the Mortgagee therefor on demand.

Section 3.2. Declaration of Subordination to Leases. At the option of the Mortgagee, this Mortgage shall become subject and subordinate, in whole or in part (but not with respect to

priority of entitlement to insurance proceeds or any award in condemnation) to any and all leases and subleases of all or any part of the Premises upon the execution by the Mortgagee and recording thereof, at any time hereafter, in the Office of the Recorder of Deeds of the county wherein the Premises are situated, of a unilateral declaration to that effect.

## ARTICLE IV

### EVENTS OF DEFAULT AND REMEDIES

Section 4.1. Events of Default. Any of the following events shall be deemed an "Event of Default" hereunder:

(a) Default shall be made in the payment when due of any amount payable to the Mortgagee under the Reimbursement Agreement or in the payment when due of any other amount required to be paid by the Mortgagor hereunder or in the payment when due of any other indebtedness secured by this Mortgage and such default remains uncured beyond any applicable grace period; or

(b) The Mortgagor or any indemnitor under the Environmental Indemnity Agreement shall file a voluntary petition in bankruptcy or shall be adjudicated a bankrupt or insolvent, or shall file any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future federal, State or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors; or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of the Mortgagor or any such indemnitor or of all or any part of the Premises, or of any or all of the royalties, revenues, rents, issues or profits thereof, or shall make any general assignment for the benefit of creditors, or shall admit in writing its or his inability to pay its or his debts generally as they become due; or

(c) A court of competent jurisdiction shall enter an order, judgment or decree approving a petition filed against the Mortgagor or any indemnitor under the Environmental Indemnity Agreement seeking any reorganization, dissolution or similar relief under any present or future federal, State or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, and such order, judgment or decree shall remain unvacated and unstayed for an aggregate of thirty (30) days (whether or not consecutive) from the first date of entry thereof; or any trustee, receiver or liquidator of the Mortgagor or any such indemnitor or guarantor or of all or any part of the Premises, or of any or all of the royalties, revenues, rents, issues or profits thereof, shall be appointed and such appointment shall remain unvacated and unstayed for an aggregate of thirty (30) days (whether or not consecutive); or

(d) A writ of execution or attachment or any similar process shall be issued or levied against all or any part of or interest in the Premises, or any judgment involving monetary damages shall be entered against the Mortgagor which shall become a lien on the Premises or any portion thereof or interest therein and such execution, attachment or similar process or judgment is not released, bonded, satisfied, vacated or stayed within thirty (30) days after its entry or levy; or

(e) If any representation or warranty of the Mortgagor contained in this Mortgage, or the Mortgagor contained in any of the other Bond Documents or any certificate or other document delivered in connection with the transactions contemplated by the Reimbursement Agreement, shall prove untrue or incorrect in any material respect; or

(f) If there has occurred any other breach of or default under any term, covenant, agreement, condition or provision contained in this Mortgage and such breach or default shall have continued for a period of thirty (30) days after written notice, specifying such failure and requesting that it be remedied, given to the Mortgagor by the Issuer or the Mortgagee, unless the Mortgagee shall agree in writing to an extension of such time; or

(g) If there has occurred any other breach of or default under any term, covenant, agreement, condition, provision, representation or warranty contained in any of the other Bond Documents which has not been cured within any applicable grace period; or

(h) If any Event of Default has occurred or been declared under any other mortgage on the Premises; or

(i) The Mortgagor sells or conveys the Premises or any part thereof or any interest therein, or shall contract to do so, without the prior written consent of the Mortgagee as required herein.

Section 4.2. Acceleration upon Default; Additional Remedies. Upon or at any time after the occurrence of any Event of Default, the Mortgagee may declare all or any of the indebtedness secured by this Mortgage to be due and payable and the same shall thereupon become due and payable without any presentment, demand, protest or notice of any kind. In addition, the Mortgagee may:

(a) Exercise any and all rights, powers and remedies under the Reimbursement Agreement including, without limitation, the right to serve notices upon the Trustee causing an acceleration of the maturity of the Bonds or a mandatory tender of the Bonds; and/or

(b) Either in person or by agent, with or without bringing any action or proceeding, if applicable law permits, enter upon and take possession of the Premises, or any part thereof, in its own name, and do any acts which it deems necessary or desirable to preserve the value, marketability or rentability of the Premises, or any part thereof or interest therein, increase the income therefrom or protect the security hereof and, with or without taking possession of the Premises, sue for or otherwise collect the rents, issues and profits thereof, including those past due and unpaid, and apply the same to the payment of taxes, insurance premiums and other charges against the Premises or in reduction of the indebtedness secured by this Mortgage; and the entering upon and taking possession of the Premises, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any Event of Default or notice of default hereunder or invalidate any act done in response to such Event of Default or pursuant to such notice of default and, notwithstanding the continuance in possession of the Premises or the collection, receipt and application of rents, issues or profits, the Mortgagee shall be entitled to exercise every right provided for in any of the other Bond Documents or by law upon occurrence of any Event of Default; and/or

(c) Commence an action to foreclose this Mortgage, appoint a receiver, or specifically enforce any of the covenants hereof; and/or

(d) Sell the Premises, or any part thereof, or cause the same to be sold, and convey the same to the purchaser thereof, pursuant to the statute in such case made and provided, and out of the proceeds of such sale retain all of the indebtedness secured by this Mortgage including, without limitation, principal, accrued interest, costs and charges of such sale, the attorneys' fees provided by such statute (or in the event of a suit to foreclose by court action, a reasonable attorney's fee), rendering the surplus moneys, if any, to the Mortgagor; provided, that in the event of public sale, such property may, at the option of the Mortgagee, be sold in one parcel or in several parcels as the Mortgagee, in its sole discretion, may elect; and/or

(e) Exercise any or all of the remedies available to a secured party under the Uniform Commercial Code of Illinois, and any notice of sale, disposition or other intended action by the Mortgagee sent to the Mortgagor at the address specified in Section 5.13 hereof, at least ten (10) days prior to such action shall constitute reasonable notice to the Mortgagor; and/or

(f) Exercise any other rights and remedies available to it at law or in equity.

Section 4.3. Foreclosure: Expense of Litigation. When the indebtedness secured by this Mortgage, or any part thereof, shall become due, whether by acceleration or otherwise, the Mortgagee shall have the right to foreclose the lien hereof for such indebtedness or part thereof. In any suit to foreclose the lien hereof or enforce any other remedy of the Mortgagee under this Mortgage or the Reimbursement Agreement, there shall be allowed and included as additional

indebtedness in the decree for sale or other judgment or decree, all expenditures and expenses which may be paid or incurred by or on behalf of the Mortgagee for attorneys' fees, appraiser's fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to title as the Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Premises. All expenditures and expenses of the nature in this Section mentioned, and such expenses and fees as may be incurred in the protection of the Premises and the maintenance of the lien of this Mortgage, including the reasonable fees of any attorney employed by the Mortgagee in any litigation or proceeding affecting this Mortgage, any of the other Bond Documents or the Premises, including probate and bankruptcy proceedings, or in preparations for the commencement or defense of any proceeding or threatened suit or proceeding, shall be so much additional indebtedness secured by this Mortgage, immediately due and payable, with interest thereon at a rate which is three percent (3%) above the Prime Rate. In the event of any foreclosure sale of the Premises, the same may be sold in one or more parcels. The Mortgagee may be the purchaser at any foreclosure sale of the Premises or any part thereof.

Section 4.4. Application of Proceeds of Foreclosure Sale. To the extent permitted by law, the proceeds of any foreclosure sale of the Premises or of the exercise of any other remedy hereunder shall be distributed and applied in the following order of priority: first, on account of all costs and expenses incident to the foreclosure proceedings or such other remedy, including all such items as are mentioned in Section 4.3 above; second, on account of payments and advances made by the Mortgagee pursuant to this Mortgage, with interest thereon as herein provided; third, on account of amounts remaining unpaid under the Reimbursement Agreement, with interest thereon as therein provided; fourth, on account of all other items which under the terms hereof constitute indebtedness secured by this Mortgage; and fifth, any overplus to the Mortgagor, its successors or assigns, as their rights may appear.

Section 4.5. Appointment of Receiver. 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 the Premises or any portion thereof. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of the Mortgagor at the time of application for such receiver and without regard to the then value of the Premises and the Mortgagee may be appointed as such receiver. Such receiver shall have power (i) to collect the rents, issues and profits of the Premises during the pendency of such foreclosure suit, as well as during any further times when the Mortgagor, except for the intervention of such receiver, would be entitled to collect such rents, issues and profits; (ii) to extend or modify any then existing leases and to make new leases, which extension, modifications and new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the indebtedness secured by this Mortgage and beyond the date of the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that

any such leases, and the options or other such provisions to be contained therein, shall be binding upon the Mortgagor and all persons whose interests in the Premises are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding discharge of the indebtedness secured by this Mortgage, satisfaction of any foreclosure judgment, or issuance of any certificate of sale or deed to any purchaser; and (iii) 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 the indebtedness secured by this Mortgage, or found due or secured by any judgment foreclosing this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to foreclosure sale.

Section 4.6. Insurance After Foreclosure. In case of an insured loss after foreclosure proceedings have been instituted, the proceeds of any insurance policy or policies, if not applied in repairing and restoring the Premises, shall be used to pay the amount due in accordance with any judgment of foreclosure that may be entered in any such proceedings, and the balance, if any, shall be paid as the court may direct.

Section 4.7. Remedies Not Exclusive; No Waiver of Remedies.

(a) The Mortgagee shall be entitled to enforce payment and performance of any indebtedness or obligations secured hereby and to exercise all rights and powers under this Mortgage or under any of the other Bond Documents or other agreement or any laws now or hereafter in force, notwithstanding that some or all of the said indebtedness and obligations secured hereby may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment or otherwise. Neither the acceptance of this Mortgage nor its enforcement, whether by court action or other powers herein contained, shall prejudice or in any manner affect the Mortgagee's right to realize upon or enforce any other security now or hereafter held by the Mortgagee, it being agreed that the Mortgagee shall be entitled to enforce this Mortgage and any other security now or hereafter held by the Mortgagee in such order and manner as it may in its absolute discretion determine. No remedy herein conferred upon or reserved to the Mortgagee is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by any of the Bond Documents to the Mortgagee or to which it may be otherwise entitled, may be exercised, concurrently or independently, from time to time and as often as it may be deemed expedient by the Mortgagee and the Mortgagee may pursue inconsistent remedies. Failure by the Mortgagee to exercise any right which it may exercise hereunder, or the acceptance by the Mortgagee of partial payments, shall not be deemed a waiver by the Mortgagee of any default or of its right to exercise any such rights thereafter.

(b) In the event the Mortgagee at any time holds additional security for any of the indebtedness secured by this Mortgage, it may enforce the sale thereof or otherwise realize upon

the same, at its option, either before or concurrently with exercising remedies under this Mortgage or after a sale is made hereunder.

Section 4.8. No Mortgagee in Possession. Nothing herein contained shall be construed as constituting the Mortgagee a mortgagee in possession.

Section 4.9. Waiver of Certain Rights. The Mortgagor shall not and will not apply for or avail itself of any appraisal, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws," now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but rather waives the benefit of such laws. The Mortgagor for itself and all who may claim through or under it waives any and all right to have the property and estates comprising the Premises marshalled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Premises sold as an entirety. The Mortgagor hereby waives any and all rights of redemption under any applicable law, including, without limitation, redemption from sale or from or under any order, judgment or decree of foreclosure, pursuant to rights herein granted, on behalf of the Mortgagor and all persons beneficially interested therein and each and every person acquiring any interest in or title to the Premises subsequent to the date of this Mortgage, and on behalf of all other persons to the extent permitted by the provisions of the laws of the State in which the Premises are located. THE MORTGAGOR HEREBY WAIVES TRIAL BY JURY IN ANY JUDICIAL PROCEEDING RELATING TO THIS MORTGAGE.

Section 4.10. Mortgagee's Use of Deposits. With respect to any deposits made with or held by the Mortgagee or any depository pursuant to any of the provisions of this Mortgage (including, without limitation, the proceeds of insurance and any taking by eminent domain, upon the occurrence of an Event of Default, the Mortgagee may, at its option, without being required to do so, apply any moneys or securities which constitute such deposits on any of the obligations under this Mortgage, the Reimbursement Agreement or the other Bond Documents, in such order and manner as the Mortgagee may elect. When the indebtedness secured hereby has been fully paid, any remaining deposits shall be paid to the Mortgagor. Such deposits are hereby pledged as additional security for the prompt payment of the Reimbursement Agreement and any other indebtedness hereunder and shall be held to be irrevocably applied by the depository for the purposes for which made hereunder and shall not be subject to the direction or control of the Mortgagor.

## ARTICLE V

### MISCELLANEOUS

Section 5.1. Recitals, Exhibits and Bond Documents. The recitals hereto are hereby made a part of this Mortgage, and all exhibits attached to this Mortgage and all Bond Documents referred to herein are hereby incorporated into and made a part of this Mortgage.

Section 5.2. Time of Essence. Time is of the essence of this Mortgage and of each and every provision hereof.

Section 5.3. Usury. The Mortgagor hereby represents and covenants that the interest charged on the indebtedness secured hereby does not violate any Illinois "Usury" laws.

Section 5.4. Lien for Service Charges and Expenses. At all times, regardless of whether any Bond proceeds have been disbursed, this Mortgage secures (in addition to any Bond proceeds disbursed from time to time) the payment of any and all origination fees, loan commissions, service charges, liquidated damages, expense and advances due to or incurred by the Mortgagee in connection with the loan to be secured hereby, all in accordance with any application and any loan commitment issued in connection with this transaction.

Section 5.5. Subrogation. To the extent that proceeds of the indebtedness secured by this Mortgage are used to pay any outstanding lien, charge or prior encumbrance against the Premises, the Mortgagee shall be subrogated to any and all rights and liens owned by any owner or holder of such outstanding liens, charges and prior encumbrances, and shall have the benefit of the priority thereof, irrespective of whether said liens, charges or encumbrances are released.

Section 5.6. Recording. The Mortgagor shall cause this Mortgage and all other documents securing the indebtedness secured by this Mortgage at all times to be properly filed and/or recorded at the Mortgagor's own expense and in such manner and in such places as may be required by law in order to fully preserve and protect the rights of the Mortgagee.

Section 5.7. Further Assurances. The Mortgagor will do, execute, acknowledge and deliver all and every further acts, deeds, conveyances, transfers and assurances necessary or advisable, in the reasonable judgment of the Mortgagee, for the better assuring, conveying, mortgaging, assigning and confirming unto the Mortgagee all property mortgaged hereby or property intended so to be, whether now owned by the Mortgagor or hereafter acquired.

Section 5.8. No Defenses. No action for the enforcement of the lien or any provision hereof shall be subject to any defense which would not be good and available to the party interposing the same in an action at law upon the Reimbursement Agreement.

Section 5.9. Invalidity of Certain Provisions. If the lien of this Mortgage is invalid or unenforceable as to any part of the indebtedness secured by this Mortgage, or if such lien is invalid or unenforceable as to any part of the Premises, the unsecured or partially secured portion of the indebtedness secured by this Mortgage shall be completely paid prior to the payment of the remaining and secured or partially secured portion thereof, and all payments made on the indebtedness secured by this Mortgage, whether voluntary or under foreclosure or other enforcement action or procedure, shall be considered to have been first paid on and applied to the full payment of that portion thereof which is not secured or fully secured by the lien of this Mortgage.



Section 5.10. Illegality of Terms. Nothing herein or in the Reimbursement Agreement nor any transaction related thereto shall be construed or shall so operate either presently or prospectively, (i) to require the Mortgagor to pay interest at a rate greater than is now lawful in such case to contract for, but shall require payment of interest only to the extent of such lawful rate, or (ii) to require the Mortgagor to make any payment or do any act contrary to law; and if any provision herein contained shall otherwise so operate to invalidate this Mortgage, in whole or in part, then such provision only shall be held for naught as though not herein contained and the remainder of this Mortgage shall remain operative and in full force and effect, and the Mortgagee shall be given a reasonable time to correct any such error.

Section 5.11. Mortgagee's Right to Deal with Transferee. In the event of the voluntary sale, or transfer by operation of law, or otherwise, of all or any part of the Premises, the Mortgagee is hereby authorized and empowered to deal with such vendee or transferee with reference to the Premises, or the debt secured hereby, or with reference to any of the terms or conditions hereof, as fully and to the same extent as it might with the Mortgagor, without in any way releasing or discharging the Mortgagor from the covenants and/or undertakings hereunder, specifically including Section 2.10(c) hereof, and without the Mortgagee waiving its rights as set forth in Section 2.10(c).

Section 5.12. Releases. The Mortgagee, without notice, and without regard to the consideration, if any, paid therefor, and notwithstanding the existence at that time of any inferior liens, may release any part of the Premises, or any person liable for any indebtedness secured hereby, without in any way affecting the liability of any party to the Reimbursement Agreement, this Mortgage, the Guaranty, or any other guaranty given as additional security for the indebtedness secured hereby and without in any way affecting the priority of the lien of this Mortgage, and may agree with any party obligated on said indebtedness to extend the time for payment of any part or all of the indebtedness secured hereby. Such agreement shall not, in any way, release or impair the lien created by this Mortgage, or reduce or modify the liability, if any, of any person or entity personally obligated for the indebtedness secured hereby, but shall extend the lien hereof as against the title of all parties having any interest in said security which interest is subject to the indebtedness secured by this Mortgage.

Section 5.13. Giving of Notice. All notices and other communications provided for hereunder shall be in writing and shall be given (i) by first class or certified mail, postage prepaid; (ii) by facsimile transmission and confirmed by the sender's telephone call to the recipient and by mailing or delivering a copy as provided in clause (i), clause, (iii) or clause (iv) hereof; (iii) by hand delivery or (iv) by courier service (including overnight courier service). Notices shall be directed as follows:

If to the Mortgagor:

51st and Menard Investments, Ltd.  
5852 W. 51<sup>st</sup> Street  
Chicago, IL 60638  
Attn: Elmer Ward  
Telephone: (708) 496-0240  
FAX: (708) 496-0282

with a copy to:

McDermott Will & Emery  
227 W. Monroe Street  
Chicago, IL 60606  
Attn: Franklin Nitikman, Esq.  
Telephone: (312) 984-7614  
FAX: (312) 984-7700

If to the Mortgagee:

Cole Taylor Bank  
4801 W. Golf Road  
Skokie, IL 60077  
Attn: Tom Aronson  
Telephone: (847) 763-2630  
FAX: (847) 459-3907

with a copy to:

Schwartz, Cooper, Greenberger  
& Krauss, Chartered  
180 North LaSalle Street  
Suite 2700  
Chicago, Illinois 60601  
Attention: Martin W. Salzman, Esq.  
Telephone: (312) 346-1300  
FAX: (312) 782-8416

Notice given as provided in clause (i) hereof shall be effective five days from the date of mailing. Notice given as provided in clauses (ii) and (iii) hereof shall be effective on the day sent if sent by 4:00 p.m. (local time at Chicago, Illinois) on a Business Day and otherwise on the next Business Day following the day of sending. Notice given as provided in clause (iv) hereof shall be effective on the Business Day following the day of sending.

Section 5.14. Binding Effect. This Mortgage and each and every covenant, agreement and other provision hereof shall be binding upon the Mortgagor and its successors and assigns (including, without limitation, each and every from time to time record owner of the Premises or any other person having an interest therein), and shall inure to the benefit of the Mortgagee and its successors and assigns.

Section 5.15. Covenants to Run with the Land. All the covenants hereof shall run with the land.

Section 5.16. Entire Agreement. This Mortgage sets forth all of the covenants, promises, agreements, conditions and understandings of the parties relating to the subject matter of this Mortgage, and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them other than as are herein set forth.

Section 5.17. Governing Law; Severability; Modification. This Mortgage shall be governed by the laws of the State of Illinois. In the event that any provision or clause of this Mortgage conflicts with applicable laws, such conflicts shall not affect other provisions hereof which can be given effect without the conflicting provision, and to this end the provisions of this Mortgage are declared to be severable. This Mortgage and each provision hereof may be modified, amended, changed, altered, waived, terminated or discharged only by a written instrument signed by the party sought to be bound by such modification, amendment, change, alteration, waiver, termination or discharge.

Section 5.18. Meanings. Wherever in this Mortgage the context requires or permits, the singular shall include the plural, the plural shall include the singular and the masculine, feminine and neuter shall be freely interchangeable.

Section 5.19. Captions. The captions or headings at the beginning of each Article and Section hereof are for the convenience of the parties and are not a part of this Mortgage.

Section 5.20. Partner Exculpation. Notwithstanding any provision hereof, no general partner of Mortgagor shall be personally liable by reason of any default in the payment or performance of the obligations of Mortgagor under this instrument; provided, however, that the foregoing exculpation shall not impair or otherwise affect any of Mortgagee's rights or remedies against any collateral now or hereafter pledged to Mortgagor as security for the obligations of Mortgagor or against Briskin or any other person or entity liable for the obligations of Briskin.

This Mortgage is executed by LaSalle Bank National Association, not personally but solely as Trustee as aforesaid, in the exercise of the power and authority conferred upon and vested in it as such Trustee, and it is expressly understood and agreed that nothing in this Mortgage shall be construed as creating any liability on such Trustee personally to perform any express or implied covenant, condition or obligation under this Mortgage, all such liability, if any, being expressly waived by every person or entity now or hereafter claiming any right, title or

or interest under this Mortgage; provided, however, that the foregoing exculpation of the Trustee shall not impair or otherwise affect any of Lender's rights or remedies against the assets held by Borrower or other collateral now or hereafter pledged to Lender as security for the obligations of Borrower or Beneficiary, or against Beneficiary, any guarantor of the Loan or any other person or entity liable for the obligations of Borrower or Beneficiary.

IN WITNESS WHEREOF, Borrower has executed this instrument the day and year first above written.

LaSalle Bank National Association, not personally but solely as Trustee as aforesaid

By: *Amy Collins*  
Title: VICE PRESIDENT

Attest: *Robert Gray*  
Title: ASSISTANT SECRETARY

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Property of Cook County Clerk's Office

STATE OF ILLINOIS )

) SS.

LaSalle Bank National Association x

COUNTY OF COOK )

I, \_\_\_\_\_, a Notary Public in and for said County, in the State aforesaid, do hereby certify that ROSEMARY COLLINS, the VICE PRESIDENT of as successor Trustee, the Exchange National Bank, not personally, but as Trustee under Trust Agreement dated January 15, 1979 and known as Trust No. 34881 and Deborah Berg, the ASSISTANT SECRETARY thereof, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such VICE PRESIDENT and ASSISTANT SECRETARY, respectively, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said Trustee, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 28 day of July, 1999.

*Melissa Garcia*  
NOTARY PUBLIC



EXHIBIT A

Legal Description

Parcel 1:

THE NORTH 486.31 FEET OF THE SOUTH 526.31 FEET OF THE WEST 230.29 FEET OF THE EAST 255.29 FEET OF THE PART OF THE SOUTHWEST  $\frac{1}{4}$  OF THE NORTHEAST  $\frac{1}{4}$  OF SECTION 8, TOWNSHIP 38 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING WEST OF A LINE DRAWN AT RIGHT ANGLES TO THE SOUTH LINE OF THE NORTHEAST  $\frac{1}{4}$  OF SAID SECTION AT THE SOUTHEAST CORNER OF THE SOUTHWEST  $\frac{1}{4}$  OF SAID NORTHEAST  $\frac{1}{4}$  OF SECTION 8, ALSO A TRIANGULAR PARCEL OF LAND IN THE SOUTHWEST  $\frac{1}{4}$  OF THE NORTHEAST  $\frac{1}{4}$  OF SECTION 8 AFORESAID DESCRIBED BY BEGINNING AT A POINT ON ABOVE DESCRIBED TRACT WHICH IS 17 FEET EAST OF THE NORTHWEST CORNER THEREOF, THENCE NORTH PARALLEL WITH THE WEST LINE OF ABOVE DESCRIBED TRACT EXTENDED A DISTANCE OF 170 FEET THENCE SOUTHEASTERLY IN A STRAIGHT LINE TO A POINT ON NORTH LINE OF ABOVE DESCRIBED TRACT 34 FEET EAST OF THE NORTHWEST CORNER THEREOF, THENCE WEST 17 FEET TO PLACE OF BEGINNING IN COOK COUNTY, ILLINOIS.

Parcel 2:

THAT PART OF THE SOUTHWEST  $\frac{1}{4}$  OF THE NORTHEAST  $\frac{1}{4}$  OF SECTION 8, TOWNSHIP 38 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS BEGINNING AT A POINT 526.31 FEET NORTH OF THE SOUTH LINE OF SAID QUARTER QUARTER SECTION AND WHICH LIES ON A LINE DRAWN AT RIGHT ANGLES TO THE SOUTH LINE OF SAID QUARTER QUARTER SECTION, AND PASSES THROUGH A POINT ON SAID LINE, SAID POINT BEING 25 FEET WEST OF THE SOUTHEAST CORNER OF SAID QUARTER QUARTER SECTION, THENCE CONTINUED NORTH ON SAID RIGHT ANGLE LINE, 300 FEET TO THE NORTH LINE OF THE SOUTH 826.31 FEET OF SAID QUARTER QUARTER SECTION, THENCE WEST ALONG SAID LINE 209.56 FEET THENCE NORTHWESTERLY 27.29 FEET TO A POINT WHICH IS 212.29 FEET WEST OF A LINE DRAWN AT RIGHT ANGLES TO THE SOUTH LINE OF THE SOUTHWEST  $\frac{1}{4}$  OF THE NORTHEAST  $\frac{1}{4}$  ABOVE DESCRIBED AND WHICH IS ALSO 853.60 FEET NORTH OF THE SOUTH LINE OF QUARTER QUARTER SECTION, THE SOUTHERLY 40.01 FEET TO A POINT 213.29 FEET WEST OF A LINE HERETOFORE DESCRIBED AS DRAWN AT RIGHT ANGLES TO THE SOUTH LINE OF THE SOUTHWEST  $\frac{1}{4}$  OF THE NORTHEAST  $\frac{1}{4}$  OF SECTION 8, SAID POINT BEING 813.60 FEET NORTH OF THE SOUTH LINE OF SAID SOUTHWEST  $\frac{1}{4}$  OF THE NORTHEAST  $\frac{1}{4}$ , THENCE SOUTH ALONG A LINE WHICH IS 213.29 FEET WEST OF AND PARALLEL WITH THE AFORESAID LINE DESCRIBED AS DRAWN AT RIGHT ANGLES TO THE SOUTH LINE OF THE SOUTHWEST  $\frac{1}{4}$  OF THE NORTHEAST  $\frac{1}{4}$  OF SECTION 8, A DISTANCE OF 117.29 FEET THE SOUTHEASTERLY 170.85 FEET TO A POINT ON THE NORTH LINE OF THE SOUTH 526.31 FEET OF SAID

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QUARTER QUARTER SECTION WHICH 196.29 FEET WEST OF THE LINE DRAWN AT RIGHT ANGLES TO THE SOUTHWEST  $\frac{1}{4}$  OF THE NORTHEAST  $\frac{1}{4}$  OF SECTION 8 AS HERETOFORE DESCRIBED, THENCE EAST ALONG THE NORTH LINE OF THE AFORESAID SOUTH 526.31 FEET, A DISTANCE OF 196.29 FEET TO THE PLACE OF BEGINNING IN COOK COUNTY, ILLINOIS.

Parcel 3:

THAT PART OF THE SOUTHWEST  $\frac{1}{4}$  OF THE NORTHEAST  $\frac{1}{4}$  OF SECTION 8, TOWNSHIP 38 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, ROUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTH LINE OF SAID QUARTER QUARTER SECTION WHICH IS 255.29 FEET WEST OF THE SOUTHEAST CORNER THEREOF, THENCE NORTH AT RIGHT ANGLES TO THE SOUTH OF SAID QUARTER QUARTER SECTION 772.31 FEET THENCE SOUTHWESTERLY IN A STRAIGHT LINE TO A POINT ON THE NORTH LINE OF THE SOUTH 526.31 FEET OF THE SOUTHWEST  $\frac{1}{4}$  OF THE NORTHEAST  $\frac{1}{4}$  OF SAID SECTION 8 WHICH IS 25 FEET WEST OF THE LAST DESCRIBED LINE, THENCE WEST PARALLEL WITH THE SOUTH LINE OF SAID QUARTER QUARTER SECTION, 132 FEET, THENCE SOUTH AT RIGHT ANGLES TO THE NORTH LINE OF THE SOUTH 526.31 FEET AFORESAID TO THE SOUTH LINE OF SAID QUARTER QUARTER SECTION, THENCE EAST 157 FEET TO THE PLACE OF BEGINNING EXCEPT THE SOUTH 40 FEET OF SAID DESCRIBED TRACT RESERVED AS A PRIVATE STREET, IN COOK COUNTY, ILLINOIS.

Common Address: 5800 W. 51<sup>st</sup> Street, Chicago, Illinois 60638

PIN Nos: 19-08-202-003; 19-08-202-019 and 19-08-202-020

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## EXHIBIT B

### PERMITTED ENCUMBRANCES

#### Permitted Exceptions

1. General real estate taxes for the second installment of the year 1998 and each year thereafter not yet due and payable.
2. Exception Nos. 4, 5, 9 through 17 and 21, inclusive, contained on Schedule B of Stewart Title Guaranty Company Commitment STC File Number 82456, Client File Number 990201322 dated June 16, 1999.
3. Exception 6 with respect to the lease with Briskin Manufacturing Company, so long as it is subordinated to this Mortgage.

Menard

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