

This instrument prepared by and should be returned to:

HAWTHORNE CREDIT UNION 172997

1519 N NAPER BLVD

NAPERVILLE IL 60563

4603/0097 25 001 Page 1 of 6
2003-01-17 10:59:32
Cook County Recorder 34.50



FIRST AMERICAN TITLE

ORDER # 270428
10F2



HAWTHORNE CREDIT UNION



Mortgage - Home Equity Line of Credit

THIS MORTGAGE CONTAINS A DUE-ON-SALE PROVISION AND SECURES INDEBTEDNESS UNDER A CREDIT AGREEMENT WHICH PROVIDES FOR A REVOLVING LINE OF CREDIT AND MAY CONTAIN A VARIABLE RATE OF INTEREST.

THIS MORTGAGE is given on 12/19/2002

by BRIAN J. LESTINA AND CHERYL A. LESTINA, IN JOINT TENANCY hereinafter referred to individually or collectively, as the context may require, as "Mortgagor") to HAWTHORNE CREDIT UNION, its successors and assigns, a corporation organized and existing under the laws of Illinois, whose address is 1519 N. Naper Boulevard, Naperville, IL 60563 ("Mortgagee").

Mortgagor does hereby mortgage, grant, convey and warrant to Mortgagee the following described property located in the County of COOK State of Illinois:

LOT 5 IN BLOCK 12 IN VENDLEY'S BERKELEY HIGHLANDS UNIT NUMBER 4, BEING A SUBDIVISION OF PART OF TH NORTHWEST FRACTIONAL 1/4 OF SECTION 7, TOWNSHIP 39 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED NOVEMBER 17, 1954 AS DOCUMENT NO. 16074721, IN COOK COUNTY, ILLINOIS.

which has the street address of 1417 VICTORIA AVE BERKLEY

Illinois, 60163 (herein "Property Address"); P.I.N. 15-07-117-005; together with (i) all improvements, (ZIP CODE)

buildings or structures of any nature whatsoever, now or hereafter erected on the property, (ii) all fixtures, including all plumbing, heating, air conditioning and ventilating equipment, now or hereafter located under, on or above the property, (iii) all rights, privileges, rents, royalties, mineral, oil and gas rights and profits, tenements, hereditaments, rights-of-way, easements, appendages, appurtenances, or riparian rights now or hereafter belonging or in any way appertaining to the property, and (iv) all of Mortgagor's right, title and interest in and to any streets, rights-of-way, alleys or strips of land now or hereafter adjoining thereto, including any replacements and additions to any of the foregoing. All of the foregoing is collectively referred to in this Mortgage as the "Property."

This Mortgage is given to secure the payment of all indebtedness, including principal, interest, Advances (as hereinafter defined), all other amounts, finance charges, payments and premiums due and the performance of all obligations that Mortgagor now or hereafter owes Mortgagee under this Mortgage and under that certain agreement governing Mortgagor's Open-end Home Equity Credit Plan entered into between Mortgagor and Mortgagee of even date herewith ("Agreement"), including all extensions, renewals and modifications thereof (all of such obligations being hereinafter referred to as the Agreement has a credit limit of \$ 43000.00 unless the limit is increased and a notice of such increase is recorded in the

Recorder's Office in the county where this Mortgage has been recorded. The maturity date of this Mortgage is 12/19/2009 which is the date by which the Debt under the Agreement and this Mortgage is due.

This Mortgage is given to secure a revolving credit loan and shall secure not only presently existing indebtedness under the Agreement but also future advances, whether such advances are obligatory or to be made at the option of Mortgagee, or otherwise, as are made within seven years from the date hereof, to the same extent as if such future advances were made

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MORTGAGE (continued)

on the date of the execution of this Mortgage, although there may be no advances made at the time of the execution of this Mortgage and although there may be no indebtedness secured hereby outstanding at the time any advance is made. The lien of this Mortgage shall be valid as to all indebtedness secured hereby, including future advances, from the time of its filing for recording in the Recorder's Office in the county in which the Property is located. The total amount of indebtedness secured hereby may increase or decrease from time to time, but the total unpaid balance of indebtedness secured hereby (including disbursements which Mortgagee may make under this Mortgage, the Agreement or any other document with respect thereof) at any one time outstanding shall not exceed the credit limit set forth above, plus interest and late charges accruing thereon and any Advances or disbursements which Mortgagee may make pursuant to the terms of this Mortgage, the Agreement or any other document with respect hereto, including but not limited to payment for taxes, special assessments or insurance on the Property and the interest on such disbursements. This Mortgage is intended to and shall be valid and have priority over all subsequent liens and encumbrances, including statutory liens, excepting taxes and assessments levied on the Property not yet due and payable, to the extent of the maximum amount secured hereby. The unpaid balance of the revolving credit loan may at certain times be zero. A zero balance does not terminate the revolving credit loan or Mortgagee's obligation to advance funds to Mortgagor. Therefore, the lien of this Mortgage will remain in full force and effect notwithstanding any zero balance.

A. REPRESENTATIONS

Mortgagor hereby represents to Mortgagee as follows:

1. **Validity of Security Documents.** (a) The execution, delivery and performance by Mortgagor of the Agreement, this Mortgage and all other documents and instruments now or hereafter, furnished to Mortgagee to evidence or secure payment of the Debt (the "Security Documents"), and the borrowing evidenced by the Agreement, will not violate any provision of law, any order of any court or other agency of government, or any mortgage, indenture, trust agreement or other instrument to which Mortgagor is a party or by which Mortgagor or any of Mortgagor's property is bound, or be in conflict with, or will result in a material breach of or constitute (with due notice and/or lapse of time) a default under any such mortgage, indenture, trust agreement or other instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of Mortgagor's property or assets, except as contemplated by the provisions of the Security Documents; and

(b) The Security Documents, as and when executed and delivered by Mortgagor, constitute the legal, valid and binding obligations of Mortgagor in accordance with their respective terms subject to applicable bankruptcy and insolvency laws.

2. **Other Information.** All other information, reports, papers and data given to Mortgagee, or to Mortgagee's legal counsel, with respect to Mortgagor, the Property, or the loan evidenced by the Security Documents are accurate and correct in all material respects and complete insofar as completeness may be necessary to give Mortgagee a true and accurate knowledge of the subject matter.

3. **Title.** Mortgagor has good and marketable title in fee simple to the Property free and clear of all encumbrances except for encumbrances of record as of the date of this Mortgage. Mortgagor will preserve its title to the Property and will forever covenant and defend the same to Mortgagee and will forever covenant and defend the validity and priority of the lien of this Mortgage.

4. **Litigation.** There is not now pending or threatened against or affecting the Property, nor, to the knowledge of Mortgagor, is there contemplated, any action, suit or proceeding at law or in equity or by or before any administrative agency which, if adversely determined, would impair or adversely affect the value or operation of the Property.

5. **Environmental Indemnity.** Mortgagor shall indemnify and hold Mortgagee harmless against and from any and all loss, cost, damage, claim or expense (including, without limitation, any and all attorney's fees or expenses of litigation) incurred or suffered by Mortgagee on account of (i) the location on the Property of any chemicals, material, substance, or contaminant (including, without limitation, oil, petroleum products, asbestos, urea, formaldehyde, foam insulation, hazardous waste and/or toxic waste), the presence or storage of which or the exposure to which is prohibited, limited, or regulated by any federal, state, county, regional, or local governmental unit, agency or authority, or which presence, storage, or exposure may pose a hazard to health and safety or (ii) the failure by Mortgagor or any prior owner or occupant of the Property to comply with any applicable federal, state, county, regional or local environmental laws, regulations, and court or administrative orders.

B. ADDITIONAL COVENANTS

Until the entire Debt shall have been paid in full, Mortgagor covenants and agrees as follows:

6. **Payment of Indebtedness.** Mortgagor shall timely pay and discharge the Debt or any part thereof in accordance with terms and conditions of the Agreement, this Mortgage, and the Security Documents.

7. **Payment of Taxes and Assessments.** Mortgagor shall duly pay and discharge, or cause to be paid and discharged all real estate and personal property taxes and other taxes and assessments, public or private; water and sewer rates and charges; all other governmental or nongovernmental charges applicable to the Property; any interest or costs or penalties with respect to any of the foregoing; and charges for any easement or agreement maintained for the benefit of the Property, general and special, ordinary or extraordinary, foreseen or unforeseen, of any kind and nature whatsoever which may at any time prior to or after the execution of this Mortgage, be assessed, levied, or imposed upon the Property or the rent or income received therefrom, or any use or occupancy thereof. All of the foregoing are hereinafter collectively referred to as "Taxes and Assessments." Mortgagor shall provide Mortgagee with satisfactory proof of payment of any Taxes and Assessments within ten (10) days of the date any such Taxes or Assessments are due. In the event Mortgagor fails to timely pay any such Taxes or Assessments, Mortgagee may, but shall not be obligated to, make such payments and any amounts so paid by Mortgagee shall be treated as "Advances" in accordance with Paragraph 16 hereof.

8. **Hazard Insurance.** Mortgagor shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage" and any other hazards for which Mortgagee requires insurance. If the Property is located in an area designed by the Director of the Federal Emergency Agency as a special flood hazard area, Mortgagor agrees to obtain Federal Flood Insurance to the extent such insurance is required for the term of the loan and for the full indebtedness of the loan. Insurance policies shall be maintained in the amounts and for the periods that Mortgagee requires. The insurance carriers providing the insurance shall be chosen by Mortgagor subject to Mortgagee's approval which shall not be unreasonably withheld.

All insurance policies and renewals shall be acceptable to Mortgagee and shall include a standard mortgage clause. Mortgagee shall have the right to hold the policies and renewals. If Mortgagee requires, Mortgagor shall name Mortgagee as

"loss-payee" and shall promptly give to Mortgagee all receipts of paid premiums and renewal notices. In the event of loss, Mortgagor shall give prompt notice to the insurance carrier and Mortgagee. Mortgagee may make proof of loss if not made promptly by Mortgagor.

Unless Mortgagee and Mortgagor otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged, if the restoration or repair is economically feasible and Mortgagee's security is not lessened or impaired. If the restoration or repair is not economically feasible or Mortgagee's security would be lessened or impaired, the insurance proceeds shall be applied to the sums secured by this Mortgage, whether or not then due, with any excess paid to Mortgagor. If Mortgagor abandons the Property, or does not answer within 30 days a notice from Mortgagee that the insurance carrier has offered to settle a claim, then Mortgagee may collect the insurance proceeds. Mortgagee may use the proceeds to repair or restore the Property or to pay sums secured by this Mortgage, whether or not then due. The 30-day period will begin when the notice is given.

Unless Mortgagee and Mortgagor otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly payments referred to in Paragraph 6 or change the amount of the payments. If under Paragraph 22 the Property is acquired by Mortgagee, Mortgagor's right to any insurance policies and proceeds resulting from damage to the Property prior to the acquisition shall pass to Mortgagee to the extent of the sums secured by this Mortgage immediately prior to the acquisition.

9. **Repair.** Mortgagor shall keep the Property in good order and condition and make all necessary or appropriate repairs, replacements and renewals thereof. Mortgagor agrees not to permit or allow any waste of the Property or make or permit to be made any material alterations or additions to the Property that would have the effect of diminishing the value thereof or that will in any way increase the risk of any fire or hazard arising out of the construction or operation thereof. Mortgagor agrees not to alter or remove any structure or fixture in the Property without Mortgagee's prior written consent. Mortgagor shall prevent any act or thing which might adversely effect or impair the value or usefulness of the Property.

10. **Restoration Following Uninsured Casualty.** In the event of the happening of any casualty, of any kind or nature, ordinary or extraordinary, foreseen or unforeseen, not covered by any Insurance Policy resulting in damage to or destruction of the Property, Mortgagor shall give notice thereof to Mortgagee and Mortgagor shall promptly at Mortgagor's sole cost and expense, commence and diligently continue to restore, repair, replace, rebuild or alter the damaged or destroyed Property as nearly as possible to its value, condition and character immediately prior to such damage or destruction.

11. **Rehabilitation Loan Agreement.** Mortgagor shall fulfill all Mortgagor's obligations under any home rehabilitation, improvement, repair, or other loan agreement which Mortgagor may enter into with Mortgagee. Mortgagee, at Mortgagee's option, may require Mortgagor to execute and deliver to Mortgagee, in a form acceptable to Mortgagee, an assignment of any rights, claims or defenses which Mortgagor may have against parties who supply labor, materials or services in connection with improvements made to the Property.

12. **Compliance with Laws.** Mortgagor shall promptly and faithfully comply with, conform to and obey or contest by appropriate proceedings in good faith all present, and use its best efforts as to future laws, ordinances, rules, regulations and requirements of every duly constituted governmental authority or agency and of every board of fire underwriters having jurisdiction, or similar body exercising functions, which may be applicable to it or to the Property or to the use and manner of use, occupancy, possession, operation, maintenance or reconstruction of the Property, whether or not such law, ordinance, rule, order, regulation or requirement shall necessitate structural changes or improvements or interfere with the use or enjoyment of the Property.

13. **Performance of Other Agreements.** Mortgagor shall duly and punctually perform all covenants and agreements expressed as binding upon it under any agreement of any nature whatsoever that involves the Property including, without limitation, all rules and regulations of a homeowners or condominium association if the Property is part of a condominium, cooperative, phased development or other homeowners association.

14. **Inspection.** Mortgagor shall permit Mortgagee, and parties designated by Mortgagee, at all reasonable times, to inspect the Property.

15. **Hold Harmless.** Mortgagor shall, at Mortgagor's sole cost and expense, save, indemnify and hold the Mortgagee, its officers, directors, employees and agents, harmless from any injury, claim, demand, suit, judgment, execution, liability, debt, damage or penalty (hereinafter collectively referred to as "Claims") affecting the Property, or the value of any of the Security Documents, arising out of, resulting from, or alleged to arise out of or result from, any action or inaction by Mortgagor, except as may be the direct result of Mortgagee's negligence. Mortgagor shall pay all expenses incurred by the Mortgagee in defending itself with regard to any and all Claims. These expenses shall include all out-of-pocket expenses, such as attorneys' and experts' fees, and shall also include the reasonable value of any services rendered by any employee of Mortgagee.

16. **Expenses.** Mortgagor shall pay or reimburse Mortgagee for all reasonable costs and expenses paid or incurred by Mortgagee in any action, proceeding or dispute of any kind in which Mortgagee is made a party or appears as party plaintiff or defendant, involving any of the Security Documents, Mortgagor, or the Property, including, without limitation, to the foreclosure or other enforcement of this Mortgage, any condemnation involving the Property, any action to protect the security hereof, or any proceeding in probate or bankruptcy, and any such amounts paid or incurred by Mortgagor shall be treated as Advances in accordance with Paragraph 17 thereof.

17. **Advances.** In the event Mortgagor fails to perform any act required of Mortgagor by any of the Security Documents or to pay when due any amount required to be paid by any of the Security Documents, Mortgagee may, but shall not be obligated to, make such payment or perform such act. Such payment or performance by Mortgagee shall not have the effect of curing any Event of Default or of extending the time for making any payment due hereunder or under the Agreement. All amounts so paid by Mortgagee, together with all expenses incurred in connection therewith, shall be deemed advances ("Advances") under this Mortgage and the Agreement shall be immediately due and payable and shall be added to the Debt. Advances shall bear interest from the date expended at the rate specified in the Agreement and shall be secured by this Mortgage as though originally a part of the principal amount of the Debt.

18. **Use Violations.** Mortgagor shall not use the Property or allow the same to be used or occupied for any unlawful purpose or in violation of any permit or certificate, or any law, ordinance, regulation or restrictive covenant, covering or affecting the use or occupancy thereof, or suffer any act to be done or any condition to exist on the Property or any article to be brought

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MORTGAGE (continued)

thereon, that may be dangerous, unless safeguarded as required by law, or that may, in law, constitute a nuisance, public or private.

19. Other Liens. Mortgagor shall not, without the prior written consent of Mortgagee, create or permit to be created or to remain, any mortgage, pledge, lien, encumbrance or charge on, security interest in, or conditional sale of or other title retention agreement on (whether prior or subordinate to the liens of the Security Documents) the Property or income therefrom other than the Security Documents ("Liens"). In the event Mortgagor fails to promptly discharge any such Liens, Mortgagee may, but shall not be obligated to, do so and any amounts paid or incurred by Mortgagee (including reasonable attorney's fees in connection therewith), shall be treated as Advances in accordance with Paragraph 18 hereof.

20. Transfer of the Property. Mortgagor shall not sell, convey, transfer or assign the Property or any beneficial interest therein or any part thereof, whether by operation of law or otherwise, without the prior written consent of Mortgagee. In the event of such a sale, conveyance, transfer or assignment, Mortgagee may, at its option, require immediate payment in full of all sums secured by this Mortgage. However, this option shall not be exercised by Mortgagee if exercise is prohibited by applicable law as of the date of this Mortgage.

If Mortgagee exercises mortgagee's option to require immediate payment in full, Mortgagee shall give Mortgagor notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is delivered or mailed within which Mortgagor must pay all sums secured by this Mortgage. If Mortgagor fails to pay these sums prior to the expiration of this period, Mortgagee may invoke any remedies permitted by this Mortgage without further notice or demand on Mortgagor.

21. Events of Default. The term Event of Default, as used in the Security Documents, shall mean the occurrence or happening, from time to time, of any one or more of the following: (a) Mortgagor fails to make any payment required by this Mortgage or the Agreement when it is due; (b) Mortgagor has engaged in or engages in fraud or material misrepresentation, either by act or omission, in connection with this Mortgage or the Agreement at any time during the application process or during the term of this Mortgage or the Agreement; or (c) Mortgagor acts or fails to act in a way that adversely affects the security under this Mortgage, including, without limitation, the following: (i) Mortgagor transfers title to the Property or sells the Property without the consent of Mortgagee; (ii) Mortgagor fails to maintain the insurance required to be carried by Mortgagor according to the terms of this Mortgage; (iii) Mortgagor fails to pay any Taxes on the Property; (iv) Mortgagor permits the filing of a lien against the Property senior to that held by Mortgagee; (v) the death of Mortgagor (in the event of more than one Mortgagor, the death of the last remaining Mortgagor who executed the Agreement); (vi) the Property is taken by condemnation or power of eminent domain; or (vii) the holder of any prior mortgage commences foreclosure of the prior mortgage.

22. Remedies. If an Event of Default shall occur and be continuing, Mortgagee may at its option, after providing Mortgagor with at least a 30 day advance notice of and opportunity period to cure the Event of Default, exercise any, some or all of the following remedies:

(a) **Acceleration.** Mortgagee may declare the unpaid portion of the Debt to be immediately due and payable, without further notice or demand (each of which hereby is expressly waived by Mortgagor), whereupon the Debt shall become immediately due and payable, anything in the Agreement or in the Security Documents to the contrary notwithstanding; provided further that the unpaid portion of the Debt shall be immediately and automatically due and payable without action of any kind on the part of Mortgagee.

(b) **Enforcement of Mortgage.** Mortgagee, with or without entry, personally or by its agents or attorneys, insofar as applicable, may:

- (i) sell any part of the Property and all estate, right, title and interest, claim and demand therein, and right or redemption thereof, to the extent permitted by and pursuant to the procedures provided by law, at one or more sales, and at such time and place upon such terms and after such notice thereof as may be required or permitted by law, and deliver to such purchasers good and sufficient deeds of conveyances, and obtain a deficiency judgment if the proceeds of a foreclosure sale are not sufficient to satisfy the Debt;
- (ii) institute proceedings for the complete foreclosure of this Mortgage;
- (iii) take steps to protect and enforce its rights whether by action, suit or proceeding in equity or at law for the specific performance of any covenant, condition or agreement in the Agreement or in this Mortgage, or in aid of the execution of any power herein granted, or for any foreclosure hereunder, or for the enforcement of any other appropriate legal or equitable remedy or otherwise as Mortgage shall elect;
- (iv) Mortgagee may, to the extent permitted by law, collect any rents, profits, or other amounts due Mortgagor from any lease, land contract, or other agreement by which Mortgagor is leasing or selling any interest in the Property, and exercise Mortgagor's rights and remedies under such agreements. Mortgagee will have no obligation to make any demand or inquiry as to the nature or sufficiency of any payment Mortgagee receives or to present or file any claim or take any other action to collect or enforce the payment of any amounts Mortgagee is entitled to under this Mortgage;
- (v) Mortgagee may pay on Mortgagor's behalf all or any part of the debt and obligations then secured by any prior mortgage, whether or not they are then due and payable and whether or not Mortgagor is then in default under the prior mortgage. However, Mortgagee will not be required to do so. Any payment Mortgagee makes shall become part of the Debt, and shall be payable on Mortgagee's demand, together with interest at the same rate as the Debt bears from time to time;
- (vi) Mortgagee may obtain or update commitments for title insurance, tax histories, title searches and title insurance concerning the Property. Any amounts that Mortgagee spends in doing so will become part of the Debt;
- (vii) Mortgagee may exercise any of Mortgagor's rights and options under any lease, land contract, or other agreement by which Mortgagor is leasing or purchasing any interest in the Property, including any option to purchase the Property or to renew or extend the term of the lease, land contract, or other agreement, or to prepay in whole or in part the lease, land contract or other agreement. Mortgagee will have no obligation to exercise any such right or option; or
- (viii) enforce this Mortgage in any other manner permitted under the laws of the State of Illinois.

(c) **Receiver or Mortgagee-in-Possession.** At any time after the commencement of an action to foreclose this Mortgage, the court in which such action was commenced may, upon request of Mortgagee, appoint a receiver of the Property either before or after a foreclosure sale, without notice or the requirement of bond (any and all such notice and bond

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MORTGAGE (continued)

29. **No Representation by Mortgagee.** By accepting or approving anything required to be observed, performed or fulfilled, or to be given to Mortgagee, pursuant to this Mortgage, including (but not limited to any officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey or appraisal), Mortgagee shall not be deemed to have arranged or represented the sufficiency, legality, effectiveness or legal effect of the same, or of any term, provision or condition thereof, and such acceptance or approval thereof shall not be or constitute any warranty or representation with respect thereto by Mortgagee.

30. **Incorporation of Agreement.** Each and every term, covenant and provision contained in the Agreement is, by this reference, incorporated into this Mortgage as if fully set forth herein.

31. **Waiver of Homestead.** Mortgagor grants this Mortgage to Mortgagee free from all rights and benefits under and by virtue of the homestead exemption laws of the State of Illinois, which said rights and benefits Mortgagor does hereby expressly release and waive.

32. **Waiver of Statutes of Limitation.** Mortgagor hereby waives, to the full extent permitted by law, statutes of limitation as a defense to any demand or obligation secured by this Mortgage

33. **Notice.** Except for any notice required under applicable law to be given in another manner, any notice provided for in this Mortgage shall be in writing and shall be deemed properly delivered three days after deposit thereof in any main or branch United States Post Office, certified or first class United States Mail, postage prepaid, addressed as follows or at such other address as may be designated by notice as provided herein:

If to the Mortgagor:

CHERYL A LESTINA
1417 VICTORIA AVE
BERKELEY IL 60163

If to the Mortgagee:

Hawthorne Credit Union
1519 N. Naper Boulevard
Naperville, IL 60563

34. **Covenants Running With the Land.** All covenants contained in this Mortgage shall run with the Land.

35. **Successors and Assigns.** All of the terms of this Mortgage shall apply to and be binding upon, and inure to the benefit of, the successors and assigns of Mortgagor and Mortgagee, respectively, and all persons claiming under or through them provided that nothing in this Paragraph shall be construed to permit a transfer, conveyance or assignment other than as expressly permitted by this Mortgage.

36. **Multiple Mortgagors.** Mortgagor's covenants and agreements hereunder shall be joint, several and primary. Any Mortgagor who co-signs this Mortgage but does not execute the Agreement: (a) is co-signing this Mortgage only to mortgage, grant and convey the Property; (b) is not personally obligated to pay the Debt; and (c) agrees that Mortgagee and any other Mortgagor may agree to extend, modify, forbear or make any accommodations with regard to the terms of this Mortgage or the Agreement without that Mortgagor's consent.

37. **Severability.** In case any one or more of the obligations or the provisions of this Mortgage or of the Agreement shall be determined to be invalid, illegal or unenforceable in any respect, the validity of the remaining obligations or provisions of this Mortgage shall be in no way affected, prejudiced or disturbed thereby.

38. **Modification.** This Mortgage may not be changed, waived, discharged or terminated orally, but only by an instrument or instruments in writing, signed by the party against which enforcement of the change, waiver, discharge or termination is asserted.

39. **Applicable Law.** This Mortgage shall be governed by and construed according to the laws of the State of Illinois.

40. **Strict Performance.** Any failure by Mortgagee to insist upon strict performance by Mortgagor of any of the terms and provisions of this Mortgage or any of the Security Documents shall not be deemed to be a waiver of any of the terms or provisions of this Mortgage or any of the Security Documents, and Mortgagee shall have the right thereafter to insist upon strict performance by Mortgagor of any and all of them.

41. **Headings.** The headings and the section and paragraph entitlements hereof are inserted for convenience of reference only, and shall in no way alter or modify the text of such paragraphs, sections and subsections.

42. **Riders.** If one or more riders are attached to and made a part of this Mortgage, the covenants and agreements for each such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Mortgage.

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

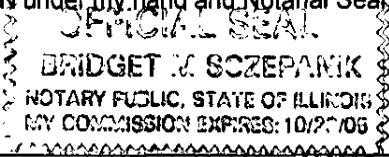
x *Cheryl A. Lestina*
CHERYL A LESTINA

x *Brian J. Lestina*
BRIAN J. LESTINA

SS: STATE OF ILLINOIS
COUNTY OF DuPage

I, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY THAT
CHERYL A LESTINA AND BRIAN J. LESTINA 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 signed and delivered said instrument as their own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal, this 19th day of December A.D., 2002


BRIDGET M. SCZEPANSKI
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES: 10/27/05

Bridget M Sczepanski
Notary Public
My Commission Expires: 10/27/05

being hereby expressly waived) and without regard to the solvency or insolvency of Mortgagor at the time of application for such receiver and without regard to the then value of the Property and Mortgagee may be appointed as such receiver or as mortgagee-in-possession. Such receiver or the mortgagee-in-possession shall have power to collect the receipts, rents, issues and profits of the Property during the pendency of such foreclosure action and, in case of a sale and a deficiency, during the full statutory period of redemption (if any), whether there be redemption or not, as well as during any further times (if any) when Mortgagor, except for the intervention of such receiver or mortgagee-in-possession, would be entitled to collect such receipts, rents, issues and profits, and all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Property during the whole of said period. Such receiver or mortgagee-in-possession shall have all of the rights and powers permitted under the laws of the State of Illinois. The court from time to time may authorize the receiver or mortgagee-in-possession to apply the net income in its hands in payment in whole or in part of: (a) the Debt or any order or judgment foreclosing the lien of this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien and security interest hereof or the lien of such order or judgment, provided such application is made prior to foreclosure sale; and (b) the deficiency in case of a foreclosure sale and deficiency. The reasonable expenses, including receiver's fee, counsel's fees, costs and agent's commission incurred pursuant to the powers herein contained shall be secured hereby.

(d) **Remedies Cumulative and Concurrent.** The rights and remedies of Mortgagee as provided in the Security Documents shall be cumulative and concurrent and may be pursued separately, successively or together against mortgagor or the Property, or any one of them, at the sole discretion of Mortgagee, and may be exercised as often as occasion therefore shall arise, all to the maximum extent permitted by applicable laws, rules and regulations. If Mortgagee elects to proceed under one right or remedy under this Mortgage or the Agreement, Mortgagee may at any time cease proceeding under such right or remedy and proceed under any other right or remedy under this Mortgage or the Agreement. The failure to exercise any such right or remedy shall in no event be construed as a waiver or release thereof. Nothing in the Agreement or this Mortgage shall affect Mortgagor's obligations to pay the Debt and perform its obligations in accordance with the terms thereof.

(e) **No Conditions Precedent to Exercise of Remedies.** Neither Mortgagor nor any other person now or hereafter obligated for payment of all or any part of the Debt shall be relieved of such obligation by reason of the failure of Mortgagee to comply with any request of Mortgagor or any other person so obligated to take action to foreclose on this Mortgage or otherwise enforce any provisions of this Mortgage or the Agreement, or by reason of the release, regardless of consideration, of all or any part of the security held for Debt, or by reason of any agreement or stipulation between any subsequent owner of the Property and Mortgagee extending the time of payment or modifying the terms of this Mortgage or the Agreement without first having obtained the consent of Mortgagor or such other person; and in the latter event Mortgagor and all such other persons shall continue to be liable to make payment according to the terms of any such extension or modification agreement, unless expressly released and discharged in writing by Mortgagee.

(f) **Discontinuance of Proceedings.** In case Mortgagor shall have proceeded to enforce any right under any of the Security Documents and such proceedings shall have been discontinued or abandoned for any reason, then in every such case, Mortgagor and Mortgagee shall be restored to their former positions and the rights, remedies and powers of Mortgagee shall continue as if no such proceedings had been taken.

23. **Condemnation.** In the event of the taking by eminent domain proceedings or the like of any part or all of the Property by any federal, state, municipal or other governmental authority or agency (hereof, all awards or other compensation for such taking shall be paid to Mortgagee for application on the Debt, provided that no such application shall result in additional interest or have the effect of curing any Event of Default or extending the time for making any payment due hereunder or under the Agreement.

24. **Prior Mortgage.** If this Mortgage is subject to a prior mortgage, the lien of which is superior to the lien of this Mortgage, Mortgagor agrees to pay each installment of the debt secured by the prior mortgage when it is due, whether by acceleration or otherwise. Mortgagor also agrees to pay and perform all other obligations of the mortgagor under the prior mortgage. Mortgagee agrees to provide Mortgagor with proof of payment or performance under the prior mortgage whenever Mortgagee requests it. If Mortgagor fails to pay any installment of principal or interest when it is due or if Mortgagor fails to pay or perform any other obligation under the prior mortgage; Mortgagee has the right, but not the obligation, to pay the installment or to pay or perform such other obligation on Mortgagor's behalf. Any amounts Mortgagee spends in performing Mortgagor's obligations will become part of the Debt, payable by Mortgagor on Mortgagee's demand, and will bear interest at the same rate as the Debt bears from time to time. Mortgagee may rely upon any written notice of default under the prior mortgage that Mortgagee receives from the holder of the prior mortgage even though Mortgagor questions or denies the existence, extent, or nature of the default. Mortgagor shall not renew, extend or modify the prior mortgage, and shall not increase the debt secured by the prior mortgage, without Mortgagee's prior written consent.

25. **Survival of Warranties and Covenants.** The warranties, representations, covenants and agreements set forth in the Security Documents shall survive the making of the loan and the execution and delivery of the Agreement, and shall continue in full force and effect until the Debt shall have been paid in full.

26. **Further Assurances.** Mortgagor shall, upon the reasonable request of Mortgagee, execute, acknowledge and deliver such further instruments (including, without limitation, a declaration of no set-off) and do such further acts as may be necessary, desirable or proper to carry out more effectively the purpose of the Security Documents and to subject to the liens thereof any property intended by the terms thereof, to be covered thereby and any renewals, additions, substitutions, replacements or betterments thereto.

27. **Recording and Filing.** Mortgagor shall, at Mortgagor's sole cost and expense, cause those Security Documents and all supplements thereto, for which constructive notice must be given to protect Mortgagee, at all times to be recorded and filed, and re-recorded and re-filed, in such manner and in such places as Mortgagee shall reasonably request, and shall pay all such recording, filing, re-recording, re-filing taxes, fees and other charges to the maximum extent permitted by the laws of the State of Illinois.

28. **Loan Expenses.** Mortgagor shall pay all applicable costs, expenses and fees set forth in the Agreement.