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UNOFFICIAL COPY

**ALBANK**

**MORTGAGE**

0030410515

1449/0102 93 005 Page 1 of 6  
2003-03-26 15:14:20  
Cook County Recorder 34.50



0030410515

RETURN TO:

Albany Bank & Trust Company  
3400 West Lawrence Avenue  
Chicago, IL 60625-5188  
Attn.: John Schellinger, Vice  
President  
OR BOX 35



**COOK COUNTY  
RECORDER  
EUGENE "GENE" MOORE  
ROLLING MEADOWS**

This document has 6 pages.

This mortgage made and entered into this **MARCH 18, 2003** by and between **ALBANY BANK & TRUST COMPANY, N.A.**, not personally but as Trustee under at Trust Agreement dated February 10, 2003 and known as **Trust # 11-5894**, (hereinafter referred to as mortgagor) and Albany Bank & Trust Company N.A., (hereinafter referred to as mortgagee), who maintains an office and place of business at 3400 West Lawrence Avenue, Chicago, IL 60625-5188.

WITNESSETH, that for the consideration hereinafter stated, receipt of which is hereby acknowledged, the mortgagor does hereby mortgage, sell, grant, assign, and convey unto the mortgagee, his successors and assigns, all of the following described property situated and being in the County of , State of , free from all rights and benefits under and by virtue of the homestead exemption laws:

**LOTS 32 THROUGH 36, BOTH INCLUSIVE, IN BLOCK 6 IN WM. L. WALLEN'S RESUBDIVISION OF THE VACATED WM. L. WALLEN'S FABER ADDITION TO NORTH EDGEWATER, BEING A SUBDIVISION IN THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 6, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MARCH 2, 1917 IN BOOK 148 OF PLATS, PAGE 37, AS DOCUMENT 6058897, (EXCEPTING THEREFROM THAT PART LYING WEST OF A LINE 50 FEET EAST OF AND PARALLEL WITH THE WEST LINE OF SECTION 6) IN COOK COUNTY, ILLINOIS.**

**P.I.N. 14-06-105-001, 14-06-105-002, 14-06-105-003, 14-06-105-004**

**Commonly known as 6245-57 N WESTERN AVE., CHICAGO, IL 60659**

Together with and including all buildings, all fixtures including but not limited to all plumbing, heating, lighting, ventilating, refrigerating, incinerating, air conditioning apparatus, and elevators (the mortgagor hereby declaring that it is intended that the items herein enumerated shall be deemed to have been permanently installed as part of the realty), and all improvements now or hereafter existing thereon; the hereditaments and appurtenances and all other rights thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, all rights of redemption, and the rents, issues, and profits of the above described property (provided, however, that the mortgagor shall be entitled to the possession of said property and to collect and retain the rents, issues, and profits until default hereunder). To have and to hold the same unto the mortgagee and the successors in interest of the mortgagee forever in fee simple or such other estate, if any, as is stated herein. Mortgagor hereby releases and waives all rights under and by virtue of the Homestead Exemption laws of the State of Illinois.

The mortgagor covenants that he is lawfully seized and possessed of and has the right to sell and convey said property; that the same is free from all encumbrances except as hereinabove recited; and that he hereby binds himself and his successors in interest to warrant and defend the title aforesaid thereto and every part thereof against the claims of all persons whomsoever.

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# UNOFFICIAL COPY

This instrument is given to secure the guaranty of payment of a promissory note dated **MARCH 18, 2003** in the principal sum of **\$750,000.00** executed by **Wheels of Chicago, Inc.**, as well as any renewals, modifications or extensions thereof.

1. The mortgagor covenants and agrees as follows:

a. He will promptly pay the indebtedness evidenced by said promissory note at the times and in the manner therein provided.

b. He will pay all taxes, assessments, water rates, and other governmental or municipal charges, fines, or impositions, for which provision has not been made hereinbefore, and will promptly deliver the official receipts therefor to the said mortgagee.

c. He will pay such expenses and fees as may be incurred in the protection and maintenance of said property, including the fees of any attorney employed by the mortgagee for the collection of any or all of the indebtedness hereby secured, or foreclosure by mortgagee's sale, or court proceedings, or in any other litigation or proceeding affecting said property. Attorneys' fees reasonably incurred in any other way shall be paid by the mortgagor.

d. For better security of the indebtedness hereby secured, upon the request of the mortgagee, its successors or assigns, he shall execute and deliver a supplemental mortgage or mortgages covering any additions, improvements, or betterments made to the property hereinabove described and all property acquired by it after the date hereof (all in form satisfactory to mortgagee). Furthermore, should mortgagor fail to cure any default in the payment of a prior or inferior encumbrance on the property described by this instrument, mortgagor hereby agrees to permit mortgagee to cure such default, but mortgagee is not obligated to do so and such advances shall become part of the indebtedness secured by this instrument, subject to the same terms and conditions.

e. The rights created by this conveyance shall remain in full force and effect during any postponement or extension of the time of the payment of the indebtedness evidenced by said promissory note or any part thereof secured hereby.

f. He will continuously maintain hazard insurance, of such type or types and in such amounts as the mortgagee may from time to time require on the improvements now or hereafter on said property, and will pay promptly when due any premiums thereof. All insurance shall be carried in companies acceptable to mortgagee and the policies and renewals thereof shall be held by mortgagee and have attached thereto loss payable clauses in favor of and in form acceptable to the mortgagee. In event of loss, mortgagor will give immediate notice in writing to mortgagee, and mortgagee may make proof of loss if not made promptly by mortgagor, and each insurance company concerned is hereby authorized and directed to make payment for such loss directly to mortgagee instead of to mortgagor and mortgagee jointly, and the insurance proceeds, or any part thereof, may be applied by mortgagee at its option either to the reduction of the indebtedness hereby secured or to the restoration or repair of the property damaged or destroyed. In event of foreclosure of this mortgage, or other transfer of title to said property in extinguishment of the indebtedness secured hereby, all right, title, and interest of the mortgagor in and to any insurance policies then in force shall pass to the purchaser or mortgagee or, at the option of the mortgagee, may be surrendered for a refund.

g. He will keep all buildings and other improvements on said property in good repair and condition; will permit, commit, or suffer no waste, impairment, deterioration of said property or any part thereof; in the event of failure of the mortgagor to keep the buildings on said premises and those erected on said premises, or improvements thereon, in good repair, the mortgagee may make such repairs as in its discretion it may deem necessary for the proper preservation thereof; and the full amount of each and every such payment shall be immediately due and payable; and shall be secured by the lien of this mortgage.

h. He will not voluntarily create or permit to be created against the property subject to this mortgage any lien or liens inferior or superior to the lien of this mortgage without the written consent of the mortgagee; and further, that he will keep and maintain the same free from the claim of all persons supplying labor or materials for construction of any and all buildings or improvements now being erected or to be erected on said premises.

i. He will not rent or assign any part of the rent of said mortgaged property or demolish, or remove, or substantially alter any building without the written consent of the mortgagee.

j. All awards of damages in connection with any condemnation for public use of or injury to any of the property subject to this mortgage are hereby assigned and shall be paid to mortgagee, who may apply the same to payment of the installments last due under said note, and mortgagee is hereby authorized, in the name of the mortgagor, to execute and deliver valid acquittances thereof and to appeal from any such award.

k. The mortgagee shall have the right to inspect the mortgaged premises at any reasonable time.

l. The real estate described herein shall also secure any other liabilities, direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, of mortgagor or its successors and assigns to the mortgagee; provided, however, that in no event shall the mortgage secure an indebtedness of the mortgagor to the mortgagee in an amount exceeding \$6,000,000.00.

m. The mortgagor is prohibited from selling, conveying, assigning the beneficial interest in and to, entering into Articles of Agreement for the sale of, leasing, renting, or in any manner transferring title to the mortgaged premises without the prior written consent of the mortgagee. Failure to obtain prior written consent shall constitute a default thereunder entitling the mortgagee to declare the whole of the debt immediately due and payable.

n. Mortgagors represent and agree that, except as disclosed in writing to the Mortgagee the premises are in compliance with all "Environmental Laws" (as hereinafter defined); that there are no conditions existing currently or likely to exist during the term of the note that require or are likely to require clean up, removal or other remedial action; that Mortgagor is not a party to any litigation or administrative proceeding, nor, to the best of Mortgagor's knowledge, is there any litigation or administrative proceeding contemplated or threatened, related to or arising out of any Environmental Laws; that neither the premises nor Mortgagor is subject to any judgment, decree, order, citation or complaint related to or arising out of any Environmental Laws; that Mortgagor has obtained all permits or licenses and filed all reports required under any applicable Environmental Laws. The term "Environmental Laws" shall mean any and all federal, state and local law, statutes, regulations, ordinances, codes, rules and other governmental restrictions or requirements relating to matters of environmental protection, pollution, health, safety, sanitation or conservation, including without limitation those relating to the presence, maintenance and removal of asbestos now or any time hereafter in effect. Mortgagor covenants and agrees to comply with all applicable Environmental Laws and to require its tenants or others operating on the premises to comply with all applicable Environmental Laws; and to provide to Mortgagee immediately upon receipt, copies of any correspondence of any nature whatsoever received by Mortgagor relating to Environmental Laws, and to advise Mortgagee in writing as soon as Mortgagor becomes aware of any condition or circumstances which makes any of the representations or statements contained in this paragraph incomplete or inaccurate. In the event Mortgagee determines in its sole and absolute discretion that there is any evidence that any such circumstance might exist whether or not described in any communication or notice to either Mortgagor or Mortgagee, Mortgagor agrees, at its own expense, and at no expense to Mortgagee, to permit an environmental audit to be conducted by Mortgagee of any independent agent selected by Mortgagee. This provision shall not relieve Mortgagor from conducting its own environmental audits or taking any other steps necessary to comply with any Environmental Laws. If, in the opinion of Mortgagee, there exists any uncorrected violation of an Environmental Law or any condition which requires or may require any cleanup, removal, or other remedial action, and such correction, cleanup, removal, or other remedial action is not completed within sixty (60) days from the date of written notice from Mortgagee to Mortgagor, the same shall, at the option of Mortgagee constitute a default hereunder, without further notice or cure period.

o. Mortgagor agrees to indemnify, defend and hold Mortgagee and its current, future or former officers, directors, employees and agents harmless from and against any and all losses, damages, liabilities, obligations, claims, costs and expenses (including without limitation, attorneys' fees and costs) incurred by Mortgagee, whether prior to or after the date hereof and whether direct, indirect, or consequential, relating to or arising out of matters of environmental protection, pollution, health, safety, sanitation, or conservation, including without limitation those relating to the presence, maintenance, or removal of asbestos. Any and all amounts owed by Mortgagor to Mortgagee under this paragraph shall constitute additional indebtedness secured by this Mortgage. Any of the provisions of this Mortgage to the contrary notwithstanding, the representations, warranties, covenants, agreements, and indemnification obligations contained herein shall survive all indicia of termination of the relationship between Mortgagor

and Mortgagee, including, without limitation, the repayment of all amounts due under the Mortgage, cancellation of the Note and the release of any and all of the Loan Documents.

2. Default in any of the covenants or conditions of this instrument or of the note or loan agreement secured hereby shall terminate the mortgagor's right to possession, use, and enjoyment of the property, at the option of the mortgagee or his assigns (it being agreed that the mortgagor shall have such right until default). Upon any such default, the mortgagee shall become the owner of all of the rents and profits accruing after default as security for the indebtedness secured hereby, with the right to enter upon said property for the purpose of collecting such rents and profits. This instrument shall operate as an assignment of any rentals on said property to that extent.

3. The mortgagor covenants and agrees that if he shall fail to pay said indebtedness or any part thereof when due, or shall fail to perform any covenant or agreement of this instrument or the promissory note secured hereby, the entire indebtedness hereby secured shall immediately become due, payable, and collectible without notice, at the option of the mortgagee or assigns, regardless of maturity, and the mortgagee or his assigns may before or after entry sell said property without appraisal (the mortgagor having waived and assigned to the mortgagee all rights of appraisal):

(i) at judicial sale or

(ii) at the option of the mortgagee, either by auction or by solicitation of sealed bids, for the highest and best bid complying with the terms of sale and manner of payment specified in the published notice of sale, first giving four weeks' notice of the time, terms, and place of such sale, by advertisement not less than once during each of said four weeks in a newspaper published or distributed in the county in which said property is situated, all other notice being hereby waived by the mortgagor (and said mortgagee, or any person on behalf of said mortgagee, may bid with the unpaid indebtedness evidenced by said note). Said sale shall be held at or on the property to be sold or at the Federal, county, or city courthouse for the county in which the property is located. The mortgagee is hereby authorized to execute for and on behalf of the mortgagor and to deliver to the purchaser at such sale a sufficient conveyance of said property, which conveyance shall contain recitals as to the happening of the default upon which the execution of the power of sale herein granted depends; and the said mortgagor hereby constitutes and appoints the mortgagee or any agent or attorney of the mortgagee, the agent and attorney in fact of said mortgagor to make such recitals and to execute said conveyance and hereby covenants and agrees that the recitals so made shall be effectual to bar all equity or right of redemption, homestead, dower, and all other exemptions of the mortgagor, all of which are hereby expressly waived and conveyed to the mortgagee; or

(iii) take any other appropriate action pursuant to state or Federal statute either in state or Federal court or otherwise for the disposition of the property.

In the event of a sale as hereinbefore provided, the mortgagor or any persons in possession under the mortgagor shall then become and be tenants holding over and shall forthwith deliver possession to the purchaser at such sale or be summarily dispossessed, in accordance with the provisions of law applicable to tenants holding over. The power and agency hereby granted are coupled with interest and are irrevocable by death or otherwise, and are granted as cumulative to the remedies for collection of said indebtedness provided by law.

4. The proceeds of any sale of said property in accordance with the preceding paragraphs shall be applied first to pay the costs and expenses of said sale, the expenses incurred by the mortgagee for the purpose of protecting or maintaining said property, and reasonable attorneys' fees; secondly, to pay the indebtedness secured hereby; and thirdly, to pay any surplus or excess to the person or persons legally entitled thereto.

5. In the event said property is sold at a judicial foreclosure sale or pursuant to the power of sale hereinabove granted, and the proceeds are not sufficient to pay the total indebtedness secured by this instrument and evidenced by said promissory note, the mortgagee will be entitled to a deficiency judgment for the amount of the deficiency without regard to appraisal.

6. In the event the mortgagor fails to pay any Federal, state, or local tax assessment, income tax or other tax lien, charge, fee, or other expense charged against the property the mortgagee is hereby authorized at his option to pay the same. Any sums so paid by the mortgagee shall be added to and become a part of the principal amount of the indebtedness evidenced by said note, subject to the same terms and conditions. If the mortgagor shall pay and discharge the indebtedness evidenced by said promissory note, and shall pay such sums and shall discharge all taxes and liens and the costs, fees, and expenses of making, enforcing, and executing this mortgage, then this mortgage shall be canceled and surrendered.



7. The covenants herein contained shall bind and the benefits and advantages shall inure to the respective successors and assigns of the parties hereto. Whenever used, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders.

8. No waiver of any covenant herein or of the obligation secured hereby shall at any time thereafter be held to be a waiver of the terms hereof or of the note secured hereby.

9. A judicial decree, order, or judgment holding any provision or portion of this instrument invalid or unenforceable shall not in any way impair or preclude the enforcement of the remaining provisions or portions of this instrument.

10. Any written notice to be issued to the mortgagor pursuant to the provisions of this instrument shall be addressed to the mortgagor at 6229 N Western Ave, , Chicago, IL 60659 and any written notice to be issued to the mortgagee shall be addressed to the mortgagee at 3400 West Lawrence Avenue Chicago, IL 60625-5188, Attn.: John Schellinger, Vice President.

10. (a) Mortgagor, on behalf of himself/herself and each and every person claiming by, through or under Mortgagor, hereby waives any and all rights of redemption, statutory or otherwise, without prejudice to Mortgagee's right to any remedy, legal or equitable, which Mortgagee may pursue to enforce payment or to effect collection of all or any part of the indebtedness secured by this Mortgage, and without prejudice to Mortgagee's right to a deficiency judgment or any other appropriate relief in the event of foreclosure of this Mortgage.

This mortgage is executed by Albany Bank & Trust Company, N.A., not personally, but as Trustee under a deed in trust delivered pursuant to Trust Agreement dated February 10, 2003, and known as Trust No. 11-5894, in the exercise of the power and authority conferred upon and vested in it as such Trustee (and said Bank hereby warrants that it possesses full power and authority to execute this instrument and the note secured hereby); and no personal liability shall exist or be asserted or enforceable against the said Bank generally or in any capacity other than as Trustee as aforesaid, because or in respect of this mortgage or the said note, and its liability as such trustee shall be limited to and enforceable only out of the property described in this mortgage, by enforcement of the lien hereof, and no duty shall rest upon said bank to sequester, hold or maintain as a continuing trust asset, any property now or hereafter held by it as Trustee as aforesaid, nor any of the income therefrom nor proceeds or avails of any sale or other disposition thereof.

IN WITNESS WHEREOF, the mortgagor has executed this instrument and the mortgagee has accepted delivery of this instrument as of the day and year aforesaid.

ALBANY BANK & TRUST COMPANY, N.A., not personally but as Trustee under a Trust Agreement dated February 10, 2003 and known as Trust Number 11-5894

BY: Michael J. Byrne  
Trust Officer

ATTEST: John C S  
Vice President

