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4084/809128



Eugene "Gene" Moore Fee: \$36.00  
Cook County Recorder of Deeds  
Date: 06/03/2003 02:03 PM Pg: 1 of 7

This instrument was prepared by and after recording, return to:

Murray J. Lewison  
Johnson and Colmar  
300 S. Wacker Dr., Suite 1000  
Chicago, Illinois 60606

THIS MORTGAGE IS JUNIOR  
AND SUBORDINATE TO  
MORTGAGE RECORDED  
May 2003 AS DOCUMENT #

0315411372

**SECOND MORTGAGE**

THIS MORTGAGE, is made on the 22<sup>nd</sup> day of May, 2003, by and between DEVON BANK, not personally, but solely as Trustee under Trust Agreement dated May 1, 2003 and known as Trust No. 6867, (Borrower), and JACK TAUBENSEE, as Trustee under the Jack Taubensee Living Trust dated June 11, 1998 and BARBRANELL TAUBENSEE, as Trustee under the Barbranell Taubensee Living Trust dated December 31, 2002, (Lender)

**AMOUNT OF LIEN:**

WHEREAS, Borrower is justly indebted to Lender in the sum of Six Hundred Fifty Thousand dollars (\$650,000.00), which is evidenced by Borrower's note, dated the same date as this Mortgage ("Note"), which provides that the full debt is due and payable on or before May 22, 2004. This Mortgage secures to Lender: (a) the repayment of the debt evidenced by the Note, with interest as provided therein; (b) the payment of all other sums, with interest, advanced under this Mortgage to protect the security of this Mortgage; and (c) the performance of Borrower's covenants and agreements under this Mortgage and the Note.

**DESCRIPTION OF PROPERTY SUBJECT TO LIEN:**

NOW, THEREFORE, in consideration of the premises and the sum set forth above, and to secure the payment of the Secured Indebtedness as defined herein, Borrower by these presents does grant, bargain, sell and convey unto Lender the property located at 45 Meadowview Drive, Northfield, Illinois, more particularly described in Exhibit A, attached hereto and made a part hereof.

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Together with all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances, rents, royalties, mineral, oil and gas rights and profits, water rights and all fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Mortgage. All of the foregoing is referred to in this Mortgage as the "Property."

TO HAVE AND TO HOLD the Premises hereby granted to the use, benefit and behalf of the Lender, forever. Conditioned, however, that if Borrower shall promptly pay or cause to be paid to Lender, at its address listed in the Note, or at such other place, which may hereafter be designated by Lender, its successors or assigns, without interest while in good standing, the principal sum of Six Hundred Fifty Thousand dollars (\$650,000.00) with final maturity, if not sooner paid, as stated in said Note unless amended or extended according to the terms of the Note executed by Borrower and payable to the order

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of Lender, then these presents shall cease and be void, otherwise these presents shall remain in full force and effect.

## COVENANTS OF BORROWER

Borrower covenants and agrees with Lender as follows:

1. **Secured Indebtedness.** This Mortgage is given as security for the Note and also as security for any and all other sums, indebtedness, obligations and liabilities of any and every kind arising, under the Note or this Mortgage, as amended or modified or supplemented from time to time, and any and all renewals, modifications or extensions of any or all of the foregoing (all of which are collectively referred to herein as the Secured Indebtedness), the entire Secured Indebtedness being equally secured with and having the same priority as any amounts owed at the date hereof.
2. **Performance of Note, Mortgage, Etc.** Borrower shall perform, observe and comply with all provisions hereof and of the Note and shall promptly pay, in lawful money of the United States of America, to Lender the Secured Indebtedness with interest thereon as provided in the Note, this Mortgage and all other documents constituting the Secured Indebtedness.
3. **Extent Of Payment Other Than Principal And Interest.** Borrower shall pay, when due and payable, (1) all taxes, assessments, general or special and other charges levied on, or assessed, placed or made against the Premises, this instrument or the Secured Indebtedness or any interest of the Lender in the Premises or the obligations secured hereby; (2) premiums on policies of fire and other hazard insurance covering the Premises, as required herein; (3) ground rents or other lease rentals; and (4) other sums related to the Premises or the indebtedness secured hereby, if any, payable by Borrower.
4. **Care of Property.** Borrower shall maintain the Premises in good condition and repair and shall not commit or suffer any material waste to the Premises. **At such time as Borrower has paid to Lender sufficient funds to pay in full Lender's bridge loan in the amount of \$652,000.00 based upon the assumption that the net proceeds of sale at closing are wholly applied to said bridge loan, Borrower shall have the right to make material alterations to the Property including demolition of any building.** Borrower 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 Lender requires insurance for their full replacement cost. All insurance policies and renewals shall include a standard mortgage clause. In the event of loss, Borrower shall give prompt notice to the insurer and Lender. If Lender acquires the Property, Borrower's right to any insurance proceeds resulting from damage to the Property prior to the acquisition shall pass to Lender to the extent of the sums secured by this Mortgage immediately prior to the acquisition.
5. **Default.** The occurrence of any one of the following events which shall not be cured within 20 days after written notice of the occurrence of the event, if the default is monetary, or which shall not be cured within 30 days after written notice, if the default is non-monetary, shall constitute an Event of Default: (1) Borrower fails to pay the Secured Indebtedness, or any part thereof, or the taxes, insurance and other charges, as herein before provided, when and as the same shall become due and payable; (2) Any material warranty of Borrower herein contained, or contained in the Note, proves untrue or misleading in any material respect; (3) Borrower materially fails to keep, observe, perform, carry out and execute the covenants, agreements, obligations and conditions set out in this Mortgage, or in the Note; (4) Foreclosure proceedings (whether judicial or otherwise) are instituted on any mortgage or any lien of any kind secured by any portion of the Premises and affecting the priority of this Mortgage.

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Upon the occurrence of any Event of Default, the Lender may immediately do any one or more of the following: (1) Declare the total Secured Indebtedness, including without limitation all payments for taxes, assessments, insurance premiums, liens, costs, expenses and attorney's fees herein specified, without notice to Borrower (such notice being hereby expressly waived), to be due and payable at once, by foreclosure or otherwise; (2) In the event that Lender elects to accelerate the maturity of the Secured Indebtedness and declares the Secured Indebtedness to be due and payable in full at once as provided for herein, or as may be provided for in the Note, then Lender shall have the right to pursue all of Lender's rights and remedies for the collection of such Secured Indebtedness, whether such rights and remedies are granted by this Mortgage, any other agreement, law, equity or otherwise, to include, without limitation, the institution of foreclosure proceedings against the Premises under the terms of this Mortgage and any applicable state or federal law.

6. **Prior Liens.** Borrower shall keep the Premises free from all prior liens (except for those consented to by Lender).

7. **Protection of Lender's Rights in the Property.** If Borrower fails to perform the covenants and agreements contained in this Mortgage, or there is a legal proceeding that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy, for condemnation or to enforce laws or regulations), then Lender may do and pay for whatever is necessary to protect the value of the Property and Lender's rights in the Property. Lender's actions may include paying any sums secured by a lien that has priority over this Mortgage, appearing in court, paying reasonable attorneys' fees and entering on the Property to make repairs. Although Lender may take action under this paragraph, Lender does not have to do so.

Any amounts disbursed by Lender under this paragraph shall become additional debt of Borrower secured by this Mortgage. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement until paid at the rate of 15% per annum.

8. **Notices, Demand and Request.** Every provision for notice and demand or request shall be deemed fulfilled by written notice and demand or request delivered in accordance with the provisions of the Note relating to notice.

9. **Severability.** If any provision of this Mortgage shall, for any reason and to any extent, be invalid or unenforceable, the remainder of the instrument in which such provision is contained, shall be enforced to the maximum extent permitted by law.

10. **Governing Law.** The terms and provisions of this Mortgage are to be governed by the laws of the State of Illinois. No payment of interest or in the nature of interest for any debt secured in part by this Mortgage shall exceed the maximum amount permitted by law.

11. **Descriptive Headings.** The descriptive headings used herein are for convenience of reference only, and they are not intended to have any effect whatsoever in determining the rights or obligations of the Borrower or Lender and they shall not be used in the interpretation or construction hereof.

12. **Attorney's Fees.** As used in this Mortgage, attorneys' fees shall include, but not be limited to, fees incurred in all matters of collection and enforcement, construction and interpretation, before, during and after suit, trial, proceedings and appeals. Attorneys' fees shall also include hourly charges for paralegals, law clerks and other staff members operating under the supervision of an attorney.

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13. **Lender in Possession.** Upon acceleration under Paragraph 5 or abandonment of the Property and at any time prior to the expiration of any period of redemption following judicial sale, Lender, in person, by agent, or by judicially appointed trustee shall be entitled to enter upon, take possession of and manage the Property and to collect the rents of the Property including those past due. Any rents collected by Lender or the receiver shall be applied first to payment of the costs of management of the Property and collection of rents, including, but not limited to, receiver's fees, premiums on receiver's bonds and reasonable attorneys' fees, and then to the sums secured by this Mortgage.

14. **Trustee Exculpation.** This Contract is executed by <sup>DEVON</sup> ~~Lakeside~~ Bank, not personally but as trustee under Trust No. ~~10-2388~~ <sup>6867</sup>, as aforesaid, in the exercise of the power and authority conferred upon and vested in said trustee as such, and it is expressly understood and agreed that nothing in said Contract contained shall be construed as creating any liability on said Trustee personally to pay any indebtedness accruing thereunder, or to perform any covenants, either expressed or implied, in said Contract (all such liability, if any, being expressly waived by said seller and by every person now or hereafter claiming any right or security thereunder) and that so far as said trustee is concerned, the owner of any indebtedness or right accruing under said Contract shall look solely to the premises described therein for the payment or enforcement thereof, it being understood that said trustee merely holds legal title to the premises described therein and has no control over the management thereof or the income therefrom, and has no knowledge respecting rentals, leases or other factual matter with respect to said premises, except as represented to it by the beneficiary or beneficiaries of said trust. Trustee does not warrant, indemnify, defend title nor is responsible for any environmental damage.

IN WITNESS WHEREOF, the Borrower has caused this instrument to be duly executed as of the day and year first above written.

DEVON BANK, not personally, but solely as  
Trustee under Trust Agreement dated May 1, 2003  
and known as Trust No. 6867

By: 

**SALLY GRIFFIN**  
Vice President & Trust Officer

Borrower

All representations and undertakings of DEVON BANK as trustee as aforesaid and not individually are those of its beneficiaries only and no liability is assumed by or shall be asserted against the DEVON BANK personally as a result of the signing of this instrument.

The terms and conditions contained in this instrument to the contrary notwithstanding this instrument is subject to the provisions of the Trustee's Exculpatory Rider attached hereto and, made a part hereof.



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## EXHIBIT A

### LEGAL DESCRIPTION

LOT 14 (EXCEPT THE SOUTH 80 FEET THEREOF) IN SCHILDGEN'S MEADOW VIEW SUBDIVISION OF PART OF LOTS 1, 2 AND 3 IN SCHILDGEN'S SUBDIVISION OF THE NORTHEAST ¼ AND THE NORTH 10 CHAINS OF THE SOUTH EAST ¼ OF SECTION 30, TOWNSHIP 42 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

Common address: 45 Meadowview Drive, Northfield, IL 60093-3546  
Property Index No. 05-201-046-0000

Property of Cook County Clerk's Office

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## EXCULPATORY RIDER

This instrument is executed by DEVON BANK, not individually but solely as Trustee as aforesaid. All the covenants and conditions to be performed hereunder by DEVON BANK are undertaken by it solely as Trustee as aforesaid and not individually, and no personal or individual liability shall be asserted or enforceable against DEVON BANK by reason of any of the covenants, statements, representation, indemnification or warranties expressed or implied herein contained in this instrument.

It is expressly understood and agreed by every person, firm or corporation claiming any interest under this document that DEVON BANK, shall have no liability, contingent or otherwise, arising out of, or in any way related to, (i) the presence, disposal, release of any hazardous materials on, over, under, from, or affecting the property of the soil, water, vegetation, buildings, personal property, persons or animals thereof; (ii) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such hazardous materials; (iii) any law suit brought or threatened, settlement reached or government order relating to such hazardous materials, and/or (iv) any violation of laws, orders, regulations, requirements, or demands of government authorities, or any policies or requirements of the trustee which are based upon or in any way related to such hazardous materials including, without limitation, attorneys and consultants' fees, investigation and laboratory fees, court costs, and litigation expenses.

In the event of any conflict between the provision of this exculpatory rider and the provisions of the document of which it is attached, the provisions of this rider shall govern.