

UNOFFICIAL COPY



Doc#: 0401539005
Eugene "Gene" Moore Fee: \$56.00
Cook County Recorder of Deeds
Date: 01/15/2004 09:04 AM Pg: 1 of 17

3 OF 5
NO ABSTRACT

This space reserved for Recorder's use only.

JUNIOR MORTGAGE

This Mortgage, made this 21st day of November, 2003, by Michael B. Simon, (hereinafter called "Mortgagor"), to Laura Eisenberg having a business address of 1512 Chambolle Court, Las Vegas, Nevada 89144 (herein called "Mortgagee");

WITNESSETH:

WHEREAS, Mortgagor has this day borrowed and is justly indebted to Mortgagee in the amount of SEVENTY ONE THOUSAND DOLLARS (\$71,000.00), evidenced by a certain Promissory Note made by Mortgagor (hereinafter referred to as the "Note") of even date payable to the order of Mortgagee, a copy of which Note is attached hereto and made part hereof as Exhibit "A."

CONVEYING CLAUSE

NOW, THEREFORE, in order to secure the payment of the principal of and interest on said Note from time to time as therein set forth, according to the tenor, purport and effect thereof, all other sums required to be paid by Mortgagor by this or any other operative document and all future advances made by Mortgagee, and, except as hereafter provided, regardless of the fact that the aggregate of all such sums may exceed the principal amount stated in said Note, and to secure the performance and observance by Mortgagor of every covenant and condition herein contained, and for and in consideration of the premises, the debt above described, and the sum of ONE DOLLAR (\$1.00) duly paid by Mortgagee on or before the execution of this Mortgage, and for other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged by Mortgagor, said Mortgagor by these presents does hereby grant, bargain and sell, mortgage, warrant, convey and confirm, assign, transfer and set over to said Mortgagee and its successors and assigns, the real estate, chattels real, personal property, and other properties, interests and rights (hereinafter

8174819
DA. COLLINS LND

01/15/04 09:04 AM

UNOFFICIAL COPY

collectively sometimes referred to as the "Premises" or "Mortgaged Property"), all as herein and as described and set forth in Exhibit "B," hereto attached and made a part of this Mortgage.

TOGETHER WITH THE FOLLOWING, ALL PART OF THE MORTGAGED PROPERTY:

1. All buildings, improvements and structures at any time, now or hereafter, erected, situated or placed thereon;
2. All rights, privileges, easements, hereditaments, appendages and appurtenances thereunto belonging or in any way appertaining;
3. All rents, revenues, income, issues and profits, including, if permitted by law, all rents accruing during any redemption period, also the reversions and sub-reversions under any leases or subleases of part or all of said Premises, whether prior or subsequent to this Mortgage, and all other rights, now or hereafter existing, of any lessor or sub-lessor, which are hereby specifically assigned and transferred primarily and on a parity with said real estate;
4. All fixtures, fixed assets, and personalty of a permanent nature owned by Mortgagor now or at any time hereafter annexed, affixed or attached to said Premises and/or said buildings, improvements or structures thereon and used or intended to be used in the possession, occupation or enjoyment thereof, and all replacements, additions and substitutions thereof or thereto, by Mortgagor or its successors, including, but without limiting the generality of the foregoing, all apparatus, appliances, machinery, equipment and articles used to supply or provide heat, gas, air conditioning, plumbing, water, lighting, power, elevator, sewerage, refrigeration, cooling, ventilation, sprinkler system and water heater used, to be used, or useful in operation of the business from time to time operated on the Premises;
5. All furniture, furnishings, machinery, equipment, inventory, good will and personal property now or hereafter belonging to Mortgagor or its assigns, and all additions to and replacements thereof, which are located or will be located on the Premises and used by Mortgagor or the tenants and occupants of said Premises in the course of the operation and use thereof, including, without limitation, the chattels mentioned in the security agreement executed in connection with this transaction.

TO HAVE AND TO HOLD the Premises and every part thereof to said Mortgagee and its successors and assigns, forever, to secure the payment of each and every debt, charge and payment herein or in any of the operative loan documents.

UNOFFICIAL COPY

I. COVENANTS OF WARRANTY

Subject to a first mortgage lien in favor of TCF Bank, which shall not exceed the amount of \$ _____, Mortgagor represents and warrants that it is lawfully seized and possessed of a good and indefeasible title and estate to the Mortgaged Property, mortgaged leases, and all mortgaged chattels, except as otherwise herein described, and Mortgagor shall forever warrant and defend such title and every part thereof to Mortgagee against the claims and demands of all persons whomsoever; that the Mortgaged Property and every part thereof is free and clear of all liens, encumbrances and charges of every kind and character, including liens for general and special taxes and assessments, excepting taxes for the current year which are not yet due.

II. GENERAL COVENANTS

Mortgagor hereby expressly represents, covenants and agrees as follows:

1. Mortgagor shall duly pay said Note and each and every installment payment therein provided to be paid, and interest on said Note, and all other sums hereby secured, punctually as and when the same shall become due and payable, without relief from valuation or appraisal laws.
2. This mortgage loan is governed by the doctrine of economic compulsion, toward the end that any advancements made by the Mortgagee necessary, in its judgment, to protect its position, including, without limitation, advancements made to complete construction of improvements on and adjoining the Mortgaged Property, to pay delinquent real estate taxes and insurance premiums, and architects', engineers' and surveyors' fees, shall be deemed obligatory advances, and all other lienors are charged with notice of this provision.
3. Mortgagor shall promptly pay and discharge, or cause to be paid and discharged, all taxes, general and special, levies, charges and assessments of every kind which may have been or shall be lawfully charged or assessed against the Mortgaged Property, or any part thereof, or which may become a lien thereon, or on or against any interest in said Mortgaged Property, or any part thereof, and shall duly pay and discharge all taxes, assessments and governmental charges against Mortgagor, including, but not by way of limitation, income taxes and withholding, social security and unemployment taxes and, in general, all taxes and charges incidental to the making or recording of this Mortgage or the deed to the Mortgagor, and unemployment taxes, as well as all claims for labor, materials and supplies, which if unpaid might by law or proceedings become a lien or charge upon any of the Mortgaged Property, and upon the request of Mortgagee, Mortgagor shall furnish satisfactory evidence of the payment and discharge of any of the foregoing items, and Mortgagor shall not suffer or permit any property subject hereto to be sold for any taxes or assessments or to be forfeited therefor; provided, however, Mortgagor may in good faith contest the validity thereof, and in case of such contest provide for the payment and security thereof in a manner satisfactory to Mortgagee.

UNOFFICIAL COPY

4. Mortgagor shall not suffer or permit any mechanic's or materialmen's lien or any other lien of any nature whatsoever to attach to any of said Mortgaged Property or to remain outstanding against same or any part thereof; provided, however, Mortgagor may in good faith contest the validity thereof, and in case of such contest provide for the payment and security thereof in a manner reasonably satisfactory to Mortgagee.

5. Mortgagor shall at all times keep the Mortgaged Property and every part thereof in good repair and condition, without any liability of Mortgagee to any person for damage for failure to repair or for any other cause, and Mortgagor shall from time to time make all needful and proper repairs, restorations, renewals and replacements thereof, so that at all times the value of the security and the efficiency of the Mortgaged Property and every part thereof shall be fully preserved and maintained, and Mortgagor shall not permit waste or allow the Mortgaged Property, or any part thereof, to depreciate in value by any act or neglect.

III.

ENVIRONMENTAL COVENANTS

Mortgagor hereby expressly represents, covenants and agrees as follows:

1. The Mortgagor shall not cause or suffer or permit to exist on the Mortgaged Property any material, element, compound, solution, mixture, substance, or other matter of any kind whatsoever which is a Hazardous Substance except in accordance with Environmental Regulations (as defined herein below).
2. Mortgagor shall maintain the Mortgaged Property so as to comply with all environmental, health and safety laws and regulations in all jurisdictions in which they are or may at any time be doing business, including, without limitation, the Environmental Protection Act; the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. "9601 et seq.; the Resource Conservation and Recovery Act of 1976, as amended by the Solid and Hazardous Waste Amendments of 1984, 42 U.S.C. "6801 et seq.; the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977, 33 U.S.C. "1251 et seq.; the Toxic Substances Control Act of 1976, 15 U.S.C. "2601 et seq.; the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. "11001 et seq.; the Clean Air Act of 1966, as amended, 42 U.S.C. "7401 et seq.; the National Environmental Policy Act of 1975, 42 U.S.C. "4321 et seq.; the Rivers and Harbours Act of 1899, 33 U.S.C. "401 et seq.; the Occupational Safety and Health Act of 1970, 29 U.S.C. "651 et seq.; and the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. "300(f) et seq., and all rules, regulations and guidance documents promulgated or published thereunder, and any other governmental requirement relating to public health, safety or the environment, including, without limitation, relating to releases, discharges, emissions or disposals to air, water, land or groundwater, to the withdrawal or use of groundwater, to the use, handling or disposal of polychlorinated biphenyls (PCB's), asbestos or urea formaldehyde, to the treatment, storage, disposal or management of hazardous substances, or any other flammable substances or explosives, radioactive materials,

UNOFFICIAL COPY

hazardous wastes, toxic substances, pollutants, pollution or related materials specified as such in, or regulated under, any of the Environmental Regulations (as hereinafter defined) (herein collectively referred to as "Hazardous Substances"), to exposure to toxic, hazardous, or other controlled, prohibited or regulated substances, to the transportation, storage, refinement, treatment, handling, use, manufacturing, disposal, management or release of gaseous or liquid substances, and any regulation, order, injunction, judgment, declaration, notice or demand issued thereunder (the above described statutes, rules, regulations and guidance documents are herein collectively referred to as the "Environmental Regulations"). If the Mortgagor shall (a) receive notice that any violation of any federal, state or local Environmental Regulation may have been committed or is about to be committed by the Mortgagor, its beneficiary or any agent thereof, (b) receive notice that any administrative or judicial complaint or order has been filed or is about to be filed against the Mortgagor, its beneficiaries or any agent thereof, alleging violations of an Environmental Regulation or requiring the Mortgagor, its beneficiaries or any agent thereof to take any action in connection with the release of any Hazardous Substances into the environment, (c) receive any notice from a federal, state or local governmental agency or private party alleging that the Mortgagor, its beneficiaries, or any agent thereof, may be liable or responsible for costs associated with a response to or clean up of a release of a Hazardous Substance into the environment or any damages caused thereby, (d) receive any notice that the Mortgagor, its beneficiaries, or any agent thereof, are subject to federal, state or local investigation evaluating whether any remedial action is needed to respond to the release of any Hazardous Substance into the environment or (e) receive any notice that any properties or assets of the Mortgagor, its beneficiaries, or any agent thereof, are subject to a lien in favor of any governmental body for any liability under Environmental Regulations or damages arising from or costs incurred by such governmental body in response to a release of Hazardous Substance into the environment, then the Mortgagor shall provide the Mortgagee with a copy of such notice within three (3) days of the date of receipt thereof.

IV.

INSURANCE AND EMINENT DOMAIN COVENANTS

1. Mortgagor shall at all times, at the cost and expense of Mortgagor, keep all of the Mortgaged Property of any insurable nature constantly insured against loss or damage by fire, lightning, explosion, tornado and windstorm, and such other risks as Mortgagee may reasonably request, in an amount at least sufficient to pay all unpaid indebtedness secured hereby, and such insurance shall also be in a sum equal to such percentage of the insurable value of the property insured as may be required to prevent Mortgagor from being considered as co-insurer thereof; such insurance to be in companies satisfactory to Mortgagee, and all such policies of insurance shall be so written as to make any loss occurring thereunder payable by standard mortgage clause attached thereto to Mortgagee as its interest may appear, irrespective of, Mortgagor, and all such policies, or a certificate or certificates of the insurers or of an insurance agency satisfactory to Mortgagee, showing that such policies, with such mortgage clauses are in force, shall be deposited with Mortgagee as additional security hereunder; and Mortgagor shall also maintain at the cost and expense of Mortgagor such public liability and other insurance as Mortgagee may reasonably request, insuring Mortgagor and Mortgagee against liabilities, claims, damages and losses to persons and property arising by reason of the use of the Mortgaged Property, or arising by reason of the conduct

UNOFFICIAL COPY

and operation of the business of Mortgagor or its successors. All such policies shall provide that the insurer shall deliver written notice to Mortgagee at least thirty (30) days prior to cancellation of any policy.

2. All insurance moneys received on account of any loss or damage to the Mortgaged Property, after deducting therefrom the reasonable charge or expenses paid or incurred in connection with the collection and disbursement of said moneys, may be used and applied for the purpose of paying the cost of repair, restoration or replacement of the Mortgaged Property damaged or destroyed, if deemed feasible by Mortgagee, and if Mortgagor so elects and provides Mortgagee with assurances satisfactory to Mortgagee that all of said repair or restoration will be done within a reasonable time; that the necessary funds are available and adequate for that purpose; and that the work will be completed free and clear of all mechanic's lien claims.

3. Mortgagor grants to Mortgagee, full power and authority to make proof of loss under any and all insurance policies, either in the name of Mortgagor or in the name of Mortgagee, and to adjust, settle, collect and receipt for all insurance, and to endorse for and in behalf and in the name of Mortgagor any check, draft or other instrument received therefor, and to collect the proceeds thereof, and also, if default shall occur hereunder, to collect and receipt for any unearned premiums and to apply same on the obligation secured hereby. In the event of foreclosure sale, any and all insurance policies may be assigned without consent of Mortgagor, and Mortgagor authorizes Mortgagee to assign said policies to the purchaser or purchasers at such foreclosure sale, or if Mortgagee elects so to do, Mortgagee may collect any unearned premiums and apply the same on the obligation secured hereby.

4. In the event that the Mortgaged Property, or any part thereof, shall be taken through condemnation proceedings or by virtue of the exercise of the right of eminent domain or pursuant to governmental action or pursuant to conveyance given to avert condemnation, any and all amounts awarded in any such condemnation proceeding for the taking of the Mortgaged Property, or any part thereof, or given for the conveyance aforesaid, which are deemed condemnation awards hereunder, are hereby assigned to and shall be paid to Mortgagee, and when received by Mortgagee, after deducting all reasonable charges in connection with the collection and disbursement thereof, may, at Mortgagee's election, be used and applied for the purpose of paying the cost of replacement of that part of the Mortgaged Property so taken or for the repair or restoration of that part of the Mortgaged Property not so taken, if deemed feasible by Mortgagee, and Mortgagor so elects, provided Mortgagee is given satisfactory assurances and indemnities that the work will be completed in apt time free and clear of mechanic's lien claims. The Mortgagee's judgment shall control the question of feasibility and the adequacy of the assurances and indemnities as to mechanic's lien claims. In the event that the Mortgaged Property is abandoned by the Mortgagor or if, after notice by Mortgagee to Mortgagor that the condemnor offers to make an award or settle a claim for damages, Mortgagor fails to respond to Mortgagee within thirty (30) days after the date such notice is mailed, Mortgagee is authorized to collect and apply the proceeds, at Mortgagee's option, either to restoration or repair of the Mortgaged Property or to the sums secured by this Mortgage.

UNOFFICIAL COPY

5. All insurance moneys and all condemnation awards not used for repair, restoration and replacement of the Mortgaged Property, and all prepayments of the mortgage debt, shall be applied in reduction of the last maturing installments of said debt. Such applications shall not extend or reduce mortgage payments due hereunder.

V.

INSPECTION COVENANTS

Mortgagor covenants that Mortgagee shall have the right from time to time, on reasonable notice, to inspect any and all of the Mortgaged Property.

VI.

CONTINUITY OF MANAGEMENT PROVISIONS; DUE ON SALE CLAUSE

The loan secured hereby is made in reliance upon the present ownership of the Mortgaged Property. Therefore, if Mortgagor shall, without consent in writing of the Mortgagee, convey all or part of the mortgaged land, including fixtures that are deemed part of the mortgaged land under local law (except to the extent permitted by the terms hereof), but expressly excluding from this Article any articles deemed chattels under local law, or if the beneficiary of Mortgagor shall relinquish or lose their present degree of such management, ownership or control, or in the event any consensual junior or concurrent lien attaches to the Mortgaged Property then all debt secured hereby shall at once become due and payable at the option of the holder of the mortgage debt. Insubstantial changes, or changes by reason of death or conveyances or assignments made to members of an owner's family, shall not operate to accelerate the debt, but in the event of such changes this clause shall apply to the grantee or assignee as if he were the Mortgagor. A consent once given under this paragraph does not exhaust this paragraph. Like consents shall be needed for future transactions.

VII.

EVENTS OF DEFAULT

It is hereby expressly provided and agreed by Mortgagor that in the event any one or more of the following events, each of which shall be and is hereby defined as an "Event of Default," shall occur, to-wit:

(a) If default shall be made in the payment of any installment of the Note, or any interest thereon, as and when the same shall become due and payable, whether by reason of acceleration or otherwise; or

(b) If default shall be made pursuant to the provisions of the note made by Mortgagee in favor of TCF Bank not to exceed the amount of \$ _____ or;

(c) If a default shall exist with respect to any other loan obligation of Mortgagor to any other party which obligation shall be secured by a mortgage with priority over this Mortgage; or

UNOFFICIAL COPY

(b) If default shall be made pursuant to the provisions of the note made by Mortgagee in favor of TCF Bank not to exceed the amount of \$ _____ or;

(c) If a default shall exist with respect to any other loan obligation of Mortgagor to any other party which obligation shall be secured by a mortgage with priority over this Mortgage; or

(d) If default shall be made by Mortgagor or any other party in the due performance of any covenant, agreement or condition contained herein or in any other operative loan document, or required to be performed or observed by Mortgagor or any party thereto, and such default shall continue for a period of thirty (30) days after the date of delivery of a written notice addressed to Mortgagor in the manner set forth below at the address set forth below, or to such other address as may be designated by Mortgagor in written notice delivered to Mortgagee provided, however, that in the event that Mortgagee has taken all commercially reasonable steps to cure the default and continues to diligently pursue all steps necessary to cure such default, then Mortgagor shall have a reasonable period of time in which to cure such default; or

(e) If any warranty of Mortgagor contained herein, or in any collateral or operative instrument, shall prove to be in any material respect incorrect or if there shall be any other breach of any such warranty; or

(f) In the event of the institution of any proceedings, legal or administrative, or the service of any notice of action looking toward the revocation or suspension of any permit or any license for the use of the Mortgaged Property Mortgagor shall only have a reasonable time to defend such proceedings and shall keep Mortgagee advised of their status but such event shall not be an Event of Default if dismissed within thirty (30) days; or

(g) In the event of the revocation or suspension of any permit or any license for the use of the Mortgaged Premises which is not restored within thirty days;

THEN, AND IN EACH AND EVERY SUCH EVENT OF DEFAULT:

1. The balance of the principal of the Note then outstanding and unpaid and the accrued interest thereon shall, at the option of Mortgagee, become and be due and payable immediately, anything in said Note or in this Mortgage to the contrary notwithstanding, and said principal sum then outstanding and unpaid shall bear interest at the default rate set forth in such Note. The failure of the Mortgagee to exercise the option for acceleration of maturity and/or foreclosure following any Event of Default or to exercise any other option granted to the Mortgagee hereunder in any one or more instances, or the acceptance by Mortgagee of partial payments hereunder shall not constitute a waiver of any such default or Event of Default, except as may be provided by law, or extend or affect a grace period, if any, but such option shall remain continuously in force. Acceleration of maturity, once claimed hereunder by Mortgagee, may, at the option of Mortgagee, be rescinded by written acknowledgment to that effect by the Mortgagee, but the tender and acceptance of partial payments

UNOFFICIAL COPY

alone shall not in any way affect or rescind such acceleration of maturity except as may be provided by law or extend or affect the grace period, if any;

2. Mortgagee may make demand for and collect and receive all rents and income from the Mortgaged Property, including rents and income accrued but unpaid prior to the date of such Event of Default, and the receipt of Mortgagee therefor shall be binding on Mortgagor with respect to the amount so paid. All sums of money received by Mortgagee from rents and income, after deducting therefrom the reasonable charges and expenses paid or incurred in connection with the collection and disbursement thereof, shall be applied to the payment of the Note secured hereby, or applied to remedy any default hereunder or under any operative document, as Mortgagee may direct.

Any lessee of the Mortgaged Property, or any part thereof, shall be fully protected in relying and acting upon the written statement of Mortgagee to the effect that there is an Event of Default and that Mortgagee is entitled to receive the rents and income hereunder, notwithstanding any notice to or knowledge of said lessee to the contrary. Said lessee shall have no duty to determine that any sum paid to Mortgagee hereunder is properly applied; and

3. Mortgagee may proceed by suit or suits at law or in equity or by any available local remedy, as Mortgagee may be advised by counsel, to enforce the payment of said Note or to foreclose this Mortgage, and in such event Mortgagee shall be entitled to fees for the services of its attorneys and agents, and for all expenses, title insurance charges, premiums, costs and outlays. Upon or at any time after the filing of any suit to foreclose the lien hereof, Mortgagee shall be entitled, as a matter of right, to the appointment of a receiver of the Mortgaged Property, either before or after sale, without notice and without regard to the solvency or insolvency of Mortgagor at the time of the application for such receiver, and without regard to the then value of the Mortgaged Property, and Mortgagee may be appointed as such receiver. Such receiver shall have full power to collect the rents, issues and profits from the Mortgaged Property and all other powers necessary or incidental for the protection, possession, control, management and operation of the Mortgaged Property. 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: (i) the indebtedness secured hereby or by any judgment foreclosing this Mortgage, or any tax, special assessment or other lien which may be or become equal to or superior to the lien hereof, or of such judgment, provided such application is made prior to foreclosure sale; and (ii) the deficiency in case of sale and deficiency; and may authorize the receiver to issue receiver's certificates to obtain funds to complete construction, which certificates shall enjoy a lien on the land and income prior to all other liens. The lien of said certificates shall not merge into the foreclosure hereof.

UNOFFICIAL COPY

VIII.

FORECLOSURE SALE PROVISIONS

1. Upon a sale or sales made by virtue of any judicial proceedings: (i) the whole of the Mortgaged Property, real, personal and mixed, may be sold in one parcel as an entirety, or the Mortgaged Property may be sold in separate parcels as may be determined by Mortgagee in its sole discretion; and (ii) at any such sale or sales Mortgagee may bid for and purchase the Mortgaged Property or any part thereof and may make payment therefor by presenting the Note hereby secured so that there may be endorsed as paid thereon the amount of such bid which is to be applied to the payment of said Note as herein provided. It is specifically covenanted and agreed that the doctrine of marshaling of assets shall be inapplicable to any sale hereunder and that Mortgagor waives all rights, if any, to have any mortgaged asset offered for sale prior to the offering of any other mortgaged asset and that the offering of assets separately or in combination shall rest within the sole discretion of the party conducting the sale.

2. Upon the foreclosure and sale of the Mortgaged Property, or any part thereof, the proceeds of such sale or sales shall be applied as follows: First, to attorneys' fees, court costs and expenses, outlays for documentary stamps, cost of procuring title certificates, continuing abstracts, title searches, surveys, examinations or insurance reasonably necessary or proper; next, to the payment of any and all advances made by Mortgagee, with interest thereon as hereinabove provided; next, to the payment of interest due pursuant to the Note; next to the payment of the principal balance of the indebtedness evidenced by the Note secured hereby; and any surplus thereafter shall be paid as a court may adjudge; provided that in the event the net proceeds of such sale or sales shall not be sufficient to pay in full the indebtedness hereby secured, Mortgagor hereby promises and agrees to pay any deficiency thereon on demand. In the absence of court proceedings, Mortgagee shall have no liability for errors in paying out such proceeds in the exercise of its reasonable discretion. Foreclosure shall be by any method permitted by the law of the state where the land lies.

IX.

PROOF OF DEBT PROVISION

If any additional sum or sums shall become due and owing by Mortgagor to Mortgagee, pursuant to the provisions hereof, the affidavit of Mortgagee shall be sufficient evidence of the fact that such additional sums are secured hereby in the amount set forth in such affidavit.

X.

PROVISION BINDING SUCCESSORS AND ASSIGNS

The term "Mortgagee" or "Mortgagor" shall be deemed to mean and include the successor or successors and assigns of said parties, and the covenants and agreements herein shall bind and inure to the benefit of the heirs, successors and assigns of said parties. Regardless of their form, all words shall be deemed singular or plural and shall have the gender required by the text and shall include any corporation, partnership or trust as the context requires.

UNOFFICIAL COPY

XI.

PARTIAL ILLEGALITY PROVISIONS

In the event any part, portion or provision of this Mortgage, the Note or any other loan document shall for any reason be illegal, invalid or unenforceable with respect to any class or part of the debt or the Mortgaged Property, then such part, portion or provision thereof shall be held to apply, and shall be applied, only to such property as to which it is legal, valid and enforceable; and such illegal, invalid or unenforceable part, portion or provision shall be deemed separate and severable from the remaining portion thereof, and such remaining portion thereof shall remain in full force and effect as to all the Mortgaged Property, the same as if such part, portion or provision thereof declared illegal, invalid or unenforceable had not been part thereof.

XII.

USURY DISCLAIMER

Mortgagee expressly disclaims any intention to charge any interest or amount whatever in excess of that permitted by law, including interest or amounts in excess of any usury law, and any such interest or amounts paid to and received by the Mortgagee shall be deemed funds held for the account of the Mortgagor, not recoverable under the Note or secured by this Mortgage.

XIII.

CONFLICT OF LAWS PROVISION

Where construction of any of the operative documents could be referred to the law of more than one state, the governing law shall be that which will sustain the validity of the document, including, without limitation, the operation of any usury law.

XIV.

MISCELLANEOUS PROVISIONS

1. All covenants and agreements herein are intended for the exclusive benefit of the parties hereto and not for the benefit of any third party whatever, nor is any trust created hereby for the benefit of any third party.
2. All documents required by Mortgagee shall be in form and substance reasonably satisfactory to Mortgagee and by a person, firm or corporation reasonably satisfactory to Mortgagee.
3. Whenever it is provided herein that notice, demand, request or other communication shall or may be given to or served upon either of the parties by the other, and whenever either of the parties shall desire to give or serve upon the other any notice, demand, request or other communication with respect hereto or the Premises, or under any other Loan Documents as defined in the Note, each such notice, demand, request or other communication shall be in writing and, any law or statute to the contrary notwithstanding, shall be effective for any purpose if given or served by

UNOFFICIAL COPY

personal delivery, confirmed facsimile transmission, overnight messenger or certified mail, return receipt requested as follows:

(i) To Mortgagor: Michael B. Simon
1840 W. Nelson
Chicago, IL 60657
Telephone No.:

With a copy to: Dorothy Culhane
1 W. Superior
Chicago, IL 60610
Telephone No.: 312-867-3000

(ii) To Mortgagee: Laura Eisenberg
1562 Chambolle Court
Las Vegas, NV 89144
Telephone No.: 702-304-2626
Facsimile No.: 702-304-2627

With a copy to: Richard W. Rappold, Esq.
Marks, Marks and Kaplan, Ltd.
120 N. LaSalle St., Suite 3200
Chicago, Illinois 60602
Telephone No.: 312-332-5200
Facsimile No.: 312-332-2952

(b) Any party may from time to time designate another address by notice given pursuant to subsection a above.

Every notice, demand, request or other communication hereunder shall be deemed to have been given, served or received on the day of delivery by personal service or confirmed facsimile transmission, the next business day after deposit with an overnight messenger service or three (3) days after the same shall have been deposited in the United States mails, certified mail, return receipt requested, postage prepaid, in the manner aforesaid.

4. It is specifically covenanted and agreed that there is no inequality of bargaining power as between the parties hereto, and the rule of construction that an instrument is construed against the party preparing it is specifically made inapplicable to this instrument. In the event of any ambiguity, the ambiguous provision shall be given a construction that is reasonable under the circumstances. The Mortgagor has had assistance of counsel of its own choosing. It is therefore agreed that none of the provisions herein or in any of the other operative documents in this transaction shall be deemed

UNOFFICIAL COPY

unconscionable. Captions are not to be used in construing this instrument. This provision applies to each and all documents now or hereafter relating to this transaction.

5. Mortgagee may intervene in any proceedings, legal or administrative, or participate in the name of Mortgagor where it deems protection of its position is necessary, using counsel of its choosing, whose fees shall be paid by Mortgagor, and shall be a lien hereunder.

6. The parties hereto recognize that statutory provisions relating to mortgages vary from state to state. If this Mortgage contains a provision invalid under local law, such provision is deemed deleted from this Mortgage. If the Mortgage fails to contain a provision required by local law, such provision is deemed incorporated herein by reference.

XV. WAIVERS

1. THE MORTGAGOR DOES HEREBY WAIVE DOWER, COURTESY, MARITAL RIGHTS OF ALL KINDS, APPRAISEMENT AND BENEFIT OF THE HOMESTEAD AND EXEMPTION LAWS OF ANY OF THE STATES IN WHICH THE PREMISES IS LOCATED, INSOFAR AS THEY AFFECT THE PREMISES AND, TO THE EXTENT PERMITTED BY LAW, ANY AND ALL REDEMPTION RIGHTS.

2. ANY FORBEARANCE BY MORTGAGEE IN EXERCISING ANY RIGHT OR REMEDY HEREUNDER OR OTHERWISE AFFORDED BY APPLICABLE LAW SHALL NOT BE A WAIVER OF OR PRECLUDE THE EXERCISE OF ANY SUCH RIGHT OR REMEDY. THE PROCUREMENT OF INSURANCE OR THE PAYMENT OF TAXES OR OTHER LIENS OR CHARGES BY MORTGAGEE SHALL NOT BE A WAIVER OF MORTGAGEE'S RIGHT TO ACCELERATE THE MATURITY OF THE DEBT SECURED HEREBY.

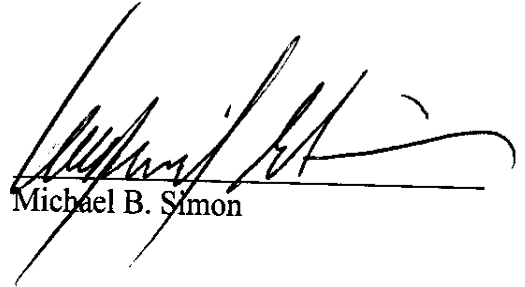
3. THE UNDERSIGNED ACKNOWLEDGES THAT THE LOAN IS BEING MADE BY THE LENDER IN PARTIAL CONSIDERATION OF LENDER'S RIGHT TO ENFORCE IN THE JURISDICTION STATED BELOW THE TERMS AND PROVISIONS OF THIS NOTE AND THE LOAN DOCUMENTS. THE UNDERSIGNED CONSENTS TO JURISDICTION IN THE STATE OF ILLINOIS AND VENUE IN ANY STATE OR FEDERAL COURT IN COOK COUNTY, ILLINOIS FOR SUCH PURPOSES AND WAIVES ANY AND ALL RIGHTS TO CONTEST SAID JURISDICTION AND VENUE. THE UNDERSIGNED WAIVES ANY RIGHTS TO COMMENCE ANY ACTION AGAINST LENDER IN ANY JURISDICTION EXCEPT THE AFORESAID COUNTY AND STATE.

4. THE UNDERSIGNED HEREBY EXPRESSLY WAIVES ANY AND ALL RIGHTS TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY LENDER AGAINST THE UNDERSIGNED WITH RESPECT TO ANY MATTER WHATSOEVER RELATING TO, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE NOTE, THE LOAN DOCUMENTS AND/OR THE TRANSACTIONS WHICH ARE THE SUBJECT OF THE DOCUMENTS.

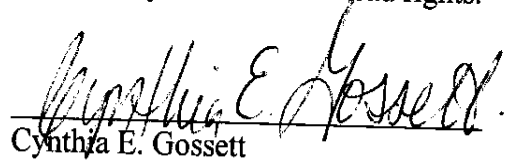
UNOFFICIAL COPY

Upon payment of all sums secured by this Mortgage, Mortgagee shall release this Mortgage without charge to Mortgagor. Mortgagor shall pay all costs of recordation, if any.

IN WITNESS WHEREOF, the undersigned executed this Mortgage as of the day and year first above written.


Michael B. Simon

The undersigned has executed this mortgage solely to waive any and all homestead rights.


Cynthia E. Gossett

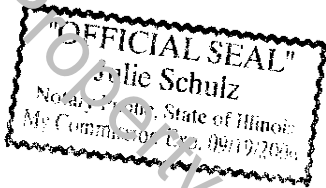
Property of Cook County Clerk's Office

UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, Julie Schulz a Notary Public in and for County in the State aforesaid, do hereby certify that Michael B. Simon, personally known to me to the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act.

Given under my hand and Notarial Seal this 4th day of December, 2003.

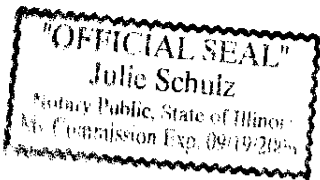


Julie Schulz
NOTARY PUBLIC

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, Julie Schulz, a Notary Public in and for County in the State aforesaid, do hereby certify that Cynthia E. Gossett, 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 she signed and delivered the said instrument as her own free and voluntary act.

Given under my hand and Notarial Seal this 4th day of December, 2003.



Julie Schulz
NOTARY PUBLIC

UNOFFICIAL COPY

**Street address of above
described property:**
1840 West Nelson
Chicago, IL 60657

Prepared by and deliver to:

Richard W. Rappold, Esq.
MARKS, MARKS AND KAPLAN, LTD.
120 North LaSalle Street
Suite 3200
Chicago, Illinois 60602-2401
(312) 332-5200

Send subsequent tax bills to:

Michael B. Simon
1840 West Nelson
Chicago, IL 60657

Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT "B"

LEGAL DESCRIPTION

LOT 108 IN SAMUEL BROWN JR.'S BELMONT AVENUE SUBDIVISION IN THE NORTHWEST ¼ OF THE NORTHEAST ¼ OF SECTION 30, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

14-30-209-021-0000

Property of Cook County Clerk's Office