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Doc#: 0413342118
Eugene "Gene" Moore Fee: \$34.00
Cook County Recorder of Deeds
Date: 05/12/2004 10:33 AM Pg: 1 of 6

172 TRUST DEED

THIS INDENTURE, made April 28, 2004 between (i) Mark Poskozim, Trustee under the Alex Milczarek Trust fbo Kathleen Milczarek dated July 16, 2001 ("Mortgagor"), and (ii) THE RICHARD AND NEONA COLE PARTNERSHIP, a partnership organized under the laws of the State of Florida (herein referred to as "Trustee"), witnesseth:

THAT WHEREAS the Mortgagor is justly indebted to the legal holder or holders of the Installment Note hereinafter described, said legal holder or holders being referred to as Holders of the Note, in the Principal Sum of FIFTY EIGHT THOUSAND NINE HUNDRED SIXTY-FOUR AND 43/100 DOLLARS (\$58,964.38) evidenced by one certain Installment Note of the Mortgagors of even date herewith, made payable to Bearer and delivered, in and by which said Note the Mortgagors promise to pay the said principal sum together with interest thereon as provided in said Note, until said Note is fully paid except that the final payment of principal and interest, if not sooner paid, shall be due on September 28, 2008; provided that the principal of each installment unless paid when due shall bear interest at the rate of SEVEN PERCENT (7.00%) per annum, and all of said principal and interest being made payable to THE RICHARD AND NEONA COLE PARTNERSHIP at 6427 Dunberry Lane, Naples, FL 34119.

NOW, THEREFORE, the Mortgagor to secure the payment of the said principal sum of money and any advances made by the holder of this Note, and said interest in accordance with the terms, provisions and limitations of this trust deed, and the performance of the covenants and agreements herein contained, by the Mortgagor to be performed, and also in consideration of the sum of One Dollar in hand paid, the receipt whereof is acknowledged, does by these presents CONVEY and WARRANT unto the Trustee, its successors and assigns, the following described Real Estate and all of their estate, right, title and interest therein, situated, lying and being in the municipality of Chicago, County of Cook, and State of Illinois, to wit:

LEGAL DESCRIPTION:

THE SOUTH 1/2 OF LOT 59 IN FREDERICK H. BARTLETT'S SUBDIVISION OF THE NORTH 7/8TH OF THE WEST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 17, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL IDENTIFICATION #13-17-309-013-0000

COMMON STREET ADDRESS: 4117 NARRAGANSETT AVENUE, CHICAGO, ILLINOIS 60634

which, with the property hereinafter described is referred to herein as the "premises,"

TOGETHER with all improvements, tenements, easements, fixtures, and appurtenances thereto belonging, and all rents, issues and profits thereof for so long and during all such times as Mortgagor may be entitled thereto (which are pledged primarily and on a parity with said real estate and not secondarily), and all apparatus, equipment or articles now or hereafter therein or thereon used to supply heat, gas, air conditioning, water, light, power, refrigeration (whether single units or centrally controlled), and ventilation, including (without restricting the foregoing), screens, window shades, storm doors and windows, floor coverings, inador beds, awnings, stoves and water heaters. All of the foregoing are declared to be a part of said real estate whether physically attached thereto or not, and it is agreed that all similar apparatus, equipment or articles hereafter placed in the premises by the Mortgagor or their successors or assigns shall be considered as constituting part of the real estate.

BOX 333-CT

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TO HAVE AND TO HOLD the premises unto the said Trustee, its successors and assigns, forever, for the purposes, and upon the uses and trusts herein set forth, 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 the Mortgagor does hereby expressly release and waive.

IT IS FURTHER UNDERSTOOD AND AGREED THAT:

1. Mortgagor shall (1) promptly repair, restore or rebuild any buildings or improvements now or hereafter on the premises which may become damaged or be destroyed; (2) keep said premises in good condition and repair, without waste, and free from mechanic's or other liens or claims for lien not expressly subordinated to the lien hereof; (3) pay when due any indebtedness which may be secured by a lien or charge on the premises superior to the lien hereof, and upon request exhibit satisfactory evidence of the discharge of such prior lien to Trustee or to the holders of the Note; (4) complete within a reasonable time any building or buildings now or at any time in process of erection upon said premises; (5) comply with all requirements of law or municipal ordinances with respect to the premises and the use thereof; (6) make no material alterations in said premises except as required by law or municipal ordinance.
2. Mortgagor covenants and agrees that no building or improvements shall be erected or constructed on said premises, nor shall any building or improvements now or hereafter on said premises be substantially remodeled or repaired without the consent in writing of the Trustee or the holder and owner of the Note secured hereby, unless any lien in favor of any person furnishing labor or material in and about said premises shall be and is hereby expressly made subject and subordinate to the lien of this trust deed.
3. Mortgagor shall pay before any penalty attaches all general taxes, and shall pay special taxes, special assessments, water charges, sewer service charges, and other charges against the premises when due, and shall upon written request, furnish to Trustee or to holders of the Note duplicate receipts therefor. To prevent default hereunder Mortgagor shall pay in full under protest, in the manner provided by statute, any tax or assessment which Mortgagor may desire to contest.
4. Mortgagor shall keep all buildings and improvements now or hereafter situated on said premises insured against loss or damage by fire, lightning or windstorm under policies providing for payment by the insurance companies of moneys sufficient either to pay the cost of replacing or repairing the same or to pay in full the indebtedness secured hereby, all in companies satisfactory to the holders of the Note, under insurance policies payable, in case of loss or damage, to Trustee for the benefit of the holders of the Note, such rights to be evidenced by the standard mortgage clause to be attached to each policy, and shall deliver all policies, including additional and renewal policies, to holders of the Note and in case of insurance about to expire, shall deliver renewal policies not less than ten days prior to the respective dates of expiration.
5. Mortgagor represents that it is currently in compliance with, and covenants and agrees that it will manage and operate the premises and will cause each tenant to occupy its demised portion of the premises in compliance with, all federal, state and local laws, rules, regulations and ordinance regulating, without limitation, air pollution, soil and water pollution, and the use, generation, storage, handling or disposal of hazardous or toxic substances or other materials (including, without limitation, raw materials, products, supplies or wastes). Mortgagor further covenants and agrees that it shall not install or permit to be installed in the premises asbestos or any substance containing asbestos or any substance deemed hazardous by or in violation of federal, state or local laws, rules, regulations or orders respecting such material. Mortgagor shall remove from the premises and dispose of any such hazardous or toxic substances or other material in a manner consistent with and in compliance with applicable laws, rules, regulations and ordinance and shall take any and all other action to remedy, rectify, rehabilitate and correct any violation of any applicable law, rule, regulations and ordinance concerning toxic or hazardous substances or any violation of any agreement entered into between Mortgagor, the holder or holders of the Note and/or any third party with respect to hazardous or toxic materials. Mortgagor shall send to Trustee within five (5) days of receipt thereof, any citation, notice of violation or other notice of potential liability from any governmental or quasi-governmental authority empowered to regulate or oversee any of the foregoing activities. Mortgagor agrees to indemnify, defend with counsel reasonably acceptable to the Trustee and the holder or holders of the Note (at Mortgagor's sole cost), and hold Trustee and the holder or holders of the Note harmless against any claim, response or other costs, damages, liability or demand (including, without limitation, reasonable attorneys' fees and costs incurred by the Trustee

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and/or the holder or holders of the Note) arising out of any claimed violation by Mortgagor of any of the foregoing laws, regulations or ordinances or breach of any of the foregoing covenants or agreements. The foregoing indemnity shall survive repayment of the indebtedness represented by the Note.

6. In case of default herein, Trustee or the holders of the Note may, but need not, make any payment or perform any act hereinbefore required of Mortgagor in any form and manner deemed expedient, and may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting said premises or contest any tax or assessment. All moneys paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including attorneys' fees, and any other moneys advanced by Trustee or the holders of the Note to protect the mortgaged premises and the lien hereof, plus reasonable compensation to Trustee for each matter concerning which action herein authorized may be taken, shall be so much additional indebtedness secured hereby and shall become immediately due and payable without notice and with interest thereon at the rate of seven per cent per annum. Inaction of Trustee or holders of the Note shall never be considered as a waiver of any right accruing to them on account of any default hereunder on the part of Mortgagors.

7. The Trustee or the holders of the Note hereby secured making any payments hereby authorized relating to taxes or assessments, may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim, thereof.

8. Mortgagor shall pay each item of indebtedness herein mentioned, both principal and interest, when due according to the terms hereof. At the option of the holders of the Note, and without notice to Mortgagor, all unpaid indebtedness secured by this Trust Deed shall, notwithstanding anything in the Note or in this Trust Deed to the contrary, become due and payable (a) immediately in the case of default in making payment of any installment of principal or interest on the Note, or (b) when default shall occur and continue for thirty days in the performance of any other agreement of the Mortgagor herein contained.

9. When the indebtedness hereby secured shall become due whether by acceleration or otherwise, holders of the Note or Trustee shall have the right to foreclose the lien hereof. In any suit to foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of Trustees or holders of the Note for attorneys' fees, Trustee's fees, appraiser's fees, outlays for documentary and expert evidence, stenographers' charges, publication costs and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, guarantee policies, Torrens certificates, and similar data and assurance with respect to title as Trustee or holders of the Note may deem to be reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the premises. All expenditures and expenses of the nature in this paragraph mentioned shall become so much additional indebtedness secured hereby and immediately due and payable, with interest thereon at the rate of seven per cent per annum, when paid or incurred by Trustee or holders of the Note in connection with (a) any proceeding, including probate and bankruptcy proceedings, to which either of them shall be a party, either as plaintiff, claimant or defendant, by reason of this trust deed or any indebtedness hereby secured; or (b) preparations for the commencement of any suit for the foreclosure hereof after accrual of such right to foreclose whether or not actually commenced; or (c) preparations for the defense of any threatened suit or proceeding which might affect the premises or the security hereof, whether or not actually commenced.

10. The proceeds of any foreclosure sale of the premises shall be distributed and applied in the following order of priority: First, on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in the preceding paragraph hereof; second, all other items which under the terms hereof constitute secured indebtedness additional to that evidenced by the Note, with interest hereon as herein provided; third, all principal and interest remaining unpaid on the Note; fourth, any overplus to Mortgagor, Mortgagor's heirs, legal representatives or assigns, as their rights may appear.

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11. Upon, or at any time after the filing of a bill to foreclose this trust deed, the court in which such bill is filed may appoint a receiver of said premises. Such appointment may be made either before or after sale, without notice, 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 premises or whether the same shall be then occupied as a homestead or not and the Trustee hereunder may be appointed as such receiver. Such receiver shall have power to collect the rents, issues and profits of said premises during the pendency of such foreclosure suite and, in case of a sale and a deficiency, during the full statutory period of redemption, whether there be redemption or not, as well as during any further times when Mortgagor, except for the intervention of such receiver, would be entitled to collect such 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 premises during the whole of said period. The Court from time to time may authorize the receiver to apply the net income in his hands in payment in whole or in part of: (1) The indebtedness secured hereby, or by any decree foreclosing this trust deed, or any tax, special assessment or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to foreclosure sale; (2) the deficiency in case of a sale and deficiency. The undersigned, in addition to all waivers herein contained does hereby waive the homestead exemption granted to the undersigned under the provisions of Section 522 (d) (1) of the Federal Bankruptcy Code as amended from time to time, and any other provision under Federal or State law, to the extent so permitted.

12. No action for the enforcement of the lien or of any provision hereof shall be subject to any defense which would not be good and available to the party interposing same in an action at law upon the Note hereby secured.

13. Trustee or the holders of the Note shall have the right to inspect the premises at all reasonable times and access thereto shall be permitted for that purpose.

14. Trustee has no duty to examine the title, location, existence, or condition of the premises, nor shall Trustee be obligated to record this trust deed or to exercise any power herein given unless expressly obligated by the terms hereof, nor be liable for any acts or omissions hereunder, except in case of its own gross negligence or misconduct or that of the agents or employees of Trustee, and it may require indemnities satisfactory to it before exercising any power herein given.

15. Trustee shall release this trust deed and the lien thereof by proper instrument upon presentation of satisfactory evidence that all indebtedness secured by this trust deed has been fully paid; and Trustee may execute and deliver a release hereof to and at the request of any person who shall, either before or after maturity thereof, produce and exhibit to Trustee the Note, representing that all indebtedness hereby secured has been paid, which representation Trustee may accept as true without inquiry. Where a release is requested of a successor trustee, such successor trustee may accept as the genuine Note herein described any Note which bears a certificate of identification purporting to be executed by a prior trustee hereunder or which confirms in substance with the description herein contained of the Note and which purports to be executed by the persons herein designated as the makers thereof; and where the release is requested of the original trustee and it has never executed a certificate on any instrument identifying same as the Note described herein, it may accept as the genuine Note herein described any Note which may be presented and which conforms in substance with the description herein contained of the Note and which purports to be executed by the persons herein designated as makers thereof.

16. Trustee may resign by instrument in writing filed in the office of the Recorder or Registrar of Titles in which this instrument shall have been recorded or filed. In case of the resignation, inability or refusal to act of Trustee, the then Recorder of Deeds of the county in which the premises are situated shall be Successor in Trust, any Successor in Trust hereunder shall have the identical title, powers and authority as are herein given Trustee, and any Trustee or successor shall be entitled reasonable compensation for all acts performed hereunder.

17. This Trust Deed and all provisions hereof, shall extend to and be binding upon Mortgagor and all persons claiming under or through Mortgagor, and the word "Mortgagor" when used herein shall include all such persons and all persons liable for the payment of the indebtedness or any part thereof, whether or not such persons shall have executed the Note or this Trust Deed.

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18. That it is the intent hereof to secure the payment of the Note herein described, whether the entire amount shall have been advanced to the Mortgagor, or to the Mortgagor's successors in title, at the date hereof, or at a later date; or, having been advanced to the Mortgagor, or to the Mortgagor's successors in title, shall have been repaid in part and further advancements made at a later date, which advances shall in no event operate to make the principal sum of the indebtedness greater than the amount named in said Note, plus any amount or amounts that may be added to the mortgage indebtedness under the terms hereof, in order to protect the security. Such additional advances may be evidenced by a Note or agreement executed by the Mortgagor, or the Mortgagor's successors in title.

19. If (i) all or any part of the Property or an interest therein is sold or transferred by Mortgagor, or (ii) any such sale or transfer is accepted or consented to by Mortgagor, in either case without the prior written consent of the Trustee or holders of the Note, Trustee or holders of the Note may, at their option, declare all the sums secured by this Trust Deed to be immediately due and payable. Trustee or holders of the Note shall have waived such option to accelerate if, prior to the sale or transfer, Trustee or holders of the Note and the person to whom the Property is to be sold or transferred reach agreement in writing that the credit of such person is satisfactory to Trustee or holders of the Note and that the interest payable on the sums secured by this Trust Deed shall be at such rate as Trustee or holders of the Note shall request. If Trustee or holders of the Note have waived the option to accelerate provided in this paragraph and if Mortgagor's successor in interest has executed a written assumption agreement accepted in writing by Trustee or holders of the Note, Trustee or holders of the Note shall release Mortgagor from all obligations under this Trust Deed and the Note. If Trustee or holders of the Note exercise such option to accelerate, Trustee or holders of the Note shall mail Mortgagor notice of acceleration. Such notice shall provide a period of not less than 30 days from the date the notice is mailed within which Mortgagor may pay the sums declared due. If Mortgagor fails to pay such sums prior to the expiration of such period, Trustee or holders of the Note may, without further notice or demand on Mortgagor, invoke any remedies permitted under this instrument.

20. Each notice, request, demand, approval or other communication which may be or is required to be given under this Trust Deed shall be in writing and shall be deemed to have been properly given when delivered personally at the address last designated hereunder for the intended party during normal business hours at such address, or when sent by United States registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

(a) If to Mortgagors as follows:

Alex Milczarek Trust fbo Kathleen Milczarek Dated 7/16/2001
Mark Poskozim, Trustee
2 Vista Ridge Drive
Galena, Illinois 61036.

(b) If to Trustee, as follows:

RICHARD AND NEONA COLE PARTNERSHIP
6427 Dunberry Lane
Naples, FL 34119


Alternatively, in either of the foregoing cases notices shall be given to such other addressee or address, or both, as the particular party may from time to time designate by written notice to the other party aforesaid, provided, however, that the designation of an addressee or address, or both, by notice hereunder shall not be effective until the third day after notice thereof is given.

Each said notice, request, demand, approval or other communication which is sent by mail in accordance with this paragraph shall be deemed given as of the date of deposit thereof for mailing in a duly constituted United States Post Office or branch thereof located in the same state as is shown in the address to which directed or on

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the third day after such deposit in any other case. Whenever required by the context throughout this instrument, the use of the singular number shall be construed to include the plural, the plural the singular, and the use of any gender shall include all genders.

Witness the hand and seal of Mortgagor the day and year first above written.




Mark Poskozim, Trustee as aforesaid

STATE OF ILLINOIS)
) SS
COUNTY OF DUPAGE)

I, the undersigned, a Notary Public in and for said County and State, DO HEREBY CERTIFY THAT Mark Poskozim, trustee as aforesaid, 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 he signed, sealed and delivered said Instrument as his free and voluntary act, for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

GIVEN under my hand and Notarial Seal April 23, 2004



Notary Public



Identification No. COLPAR10003

THIS INSTRUMENT WAS PREPARED BY & AFTER RECORDING SHOULD BE RETURNED TO:

William H. Pokorny, Jr.
1000 Jorie Boulevard, Suite 260
Oak Brook, Illinois 60523-3069
tel: 630-571-6500