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ALBANK MORTGAGE



Doc#: 0432144036
Eugene "Gene" Moore Fee: \$34.00
Cook County Recorder of Deeds
Date: 11/16/2004 09:58 AM Pg: 1 of 6

RETURN TO:

Albany Bank & Trust Company
3400 West Lawrence Avenue
Chicago, IL 60625-5188
Attn.: Michael Jeffries
OR BOX 35

This document has 6 pages.

This mortgage made and entered into this **OCTOBER 28, 2004** by and between **RAMESH S. PATEL (a/k/a REMSHCHANDRA S. PATEL)** and **SHAKUNTALA PATEL (a/k/a SHAKUNTALA R. PATEL)**, his wife, (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 **COOK**, State of **ILLINOIS**, free from all rights and benefits under and by virtue of the homestead exemption laws:

SEE ATTACHED EXHIBIT "A" FOR LEGAL DESCRIPTION

P.I.N. 08-24-402-115 VOL 50

Real Estate Index 21139097

Commonly known as 390 DOVER LN, DES PLAINES, IL 60018

Together with and including all buildings, all fixtures including but not limited to all plumbing, heating, lighting, ventilating, refrigerating, incinerating, air conditioning apparatus, and elevator (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.

This instrument is given to secure the guaranty of payment of a promissory note dated **5/28/2003** in the remaining principal sum of **\$31,893.93** executed by **BAPS INVESTORS, 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.

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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.

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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 or 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.

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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 hereby 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.

UNOFFICIAL COPY**EXHIBIT "A"
LEGAL DESCRIPTION**

PARCEL 1:

THAT PART OF LOT 5 OF ZEMON'S CAPITOL HILL SUBDIVISION, UNIT NUMBER 9, BEING A SUBDIVISION OF PART OF THE SOUTH WEST 1/4 OF THE SOUTH EAST 1/2 OF SECTION 24, TOWNSHIP 41 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN THE CITY OF DES PLAINES, ELK GROVE VILLAGE TOWNSHIP, COOK COUNTY, ILLINOIS DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTH EAST CORNER OF SAID LOT 5, THENCE SOUTHWARD ALONG THE EAST LINE OF SAID LOT 5, SOUTH 1 DEGS 39 MINS 26 SECONDS EAST, A DISTANCE OF 71.44 FEET, THENCE SOUTH 62 DEGS 26 MINS 36 SECONDS WEST, A DISTANCE OF 114.70 FEET TO A POINT ON THE WEST LINE OF SAID LOT 5, THENCE NORTHWARD ALONG THE WEST LINE OF SAID LOT 5, NORTH 1 DEGS 39 MINS 26 SECONDS WEST A DISTANCE OF 7.00 FEET, THENCE CONTINUING NORTHWARD ALONG THE WEST LINE OF SAID LOT 5, NORTH 11 DEGS 51 MINS 11 SECONDS WEST, A DISTANCE OF 48.61 FEET TO THE NORTH WEST CORNER OF SAID LOT 5, THENCE EASTWARD ALONG THE NORTH LINE OF SAID LOT 5, BEING A CURVED LINE CONVEXED TO THE SOUTH OF 281.95 FEET IN RADIUS FOR AN ARC LENGTH OF 107.56 FEET TO A POINT OF TANGENCY; THENCE CONTINUING EASTWARD ALONG THE NORTH LINE OF SAID LOT 5, NORTH 48 DEGS 22 MINS 28 SECONDS EAST, A DISTANCE OF 23.55 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

EASEMENTS AS SET FORTH IN THE DECLARATION OF EASEMENTS AND EXHIBIT 1 THERETO ATTACHED DATED MAY 1, 1963 AND RECORDED MAY 1, 1963 AS DOCUMENT NUMBER 18784900 MADE BY D.S.P. BUILDING CORPORATION, AN ILLINOIS CORPORATION, AND ALSO CONTAINED IN DOCUMENT NUMBER 18571392 AND IN DOCUMENT NUMBER 18553110, AND IN DOCUMENT NUMBER 18857393 AND 18892807 AND AS CREATED BY THE DEED FROM D.S.P. BUILDING CORPORATION, A CORPORATION OF ILLINOIS TO BETH ANN MARKS DATED MAY 15, 1967 AND RECORDED JUNE 12, 1967 AS DOCUMENT NUMBER 20163681, FOR THE BENEFIT OF PARCEL 1, AFORESAID FOR INGRESS AND EGRESS OVER AND ACROSS THAT PART OF LOT 5 AS FOLLOWS:

BEGINNING AT THE NORTH WEST CORNER OF LOT 5, THENCE SOUTHWARD ALONG THE WEST LINE OF SAID LOT 5, SOUTH 11 DEGS 51 MINS 11 SECONDS EAST, A DISTANCE OF 48.61 FEET, THENCE SOUTH 1 DEGS 39 MINS 26 SECONDS EAST, A DISTANCE OF 199.74 FEET, THENCE SOUTH 46 DEGS 46 MINS 44 SECONDS EAST, A DISTANCE OF 55.0 FEET, THENCE NORTH 88 DEGS 20 MINS 34 SECONDS A DISTANCE OF 63.85 FEET TO THE SOUTH EAST CORNER OF LOT 5, THENCE NORTHWARD ALONG THE EAST LINE OF SAID LOT 5, NORTH 1 DEGS 39 MINS 36 SECONDS WEST, A DISTANCE OF 10.0 FEET, THENCE SOUTH 88 DEGS 20 MINS 84 SECONDS WEST, A DISTANCE OF 52.63 FEET, THENCE NORTH 46 DEGS 46 MINS 44 SECONDS WEST, A DISTANCE OF 57.20 FEET; THENCE NORTH 1 DEGS 39 MINS 26 SECONDS WEST, A DISTANCE OF 27.0 FEET, THENCE NORTH 28 DEGS 20 MINS 34 SECONDS EAST, A DISTANCE OF 40.0 FEET, THENCE NORTH 1 DEGS 39 MINS 26 SECONDS WEST, A DISTANCE OF 105.0 FEET, THENCE NORTH 31 DEGS 39 MINS 46 SECONDS WEST, A DISTANCE OF 46.01 FEET, THENCE NORTH 11 DEGS 51 MINS 11 SECONDS WEST, A DISTANCE OF 33.71 FEET TO A POINT ON THE NORTH LINE OF LOT 5, THENCE WESTWARD ALONG THE SAID NORTH LINE OF LOT 5, AN ARC DISTANCE OF 10.12 FEET TO THE POINT OF BEGINNING (EXCEPT THAT PART THEREOF FALLING IN PARCEL 1 AFORESAID) OF ZEMON'S CAPITOL HILL SUBDIVISION, UNIT NUMBER 9 AFORESAID, ALL IN COOK COUNTY, ILLINOIS.

COMMONLY KNOWN AS 390 DOVER LANE, DES PLAINES, IL 60018
P.I.N. # 08-24-402-115-0000