

# UNOFFICIAL COPY



Doc#: 0616010028 Fee: \$36.50  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 06/09/2006 09:54 AM Pg: 1 of 7

Property of Cook County

## MORTGAGE

THIS MORTGAGE made on June 8, 2006, by GARY A. FOSTER AND PAMELA M. FOSTER whose address is 4742 S. King Dr., Chicago, IL 60615 (hereinafter referred to as the "Mortgagor") and RICHARD AGUINAGA (hereinafter referred to as the "Mortgagee") whose address is 5801 S. Monitor, Chicago, IL 60638.

WHEREAS, the Mortgagor has, concurrently herewith, executed and delivered to the Mortgagee, the Mortgagor's Promissory Note (hereinafter referred to as the "Note") dated the date hereof, in the principal sum of Sixty-Eight Thousand Dollars (\$68,000.00) payable to the order of and delivered to the Mortgagee, in and by which Note the Mortgagor promises to pay the said principal sum and interest at the rate and in installments as provided in said Note, with a final payment of the balance due on June 15, 2008 and all of said principal and interest are made payable at such place as the holder of the Note may, from time to time, in writing appoint, and in absence of such appointment, then at the office of the Mortgagee at 5801 South Monitor, Chicago, Illinois 60638.

NOW, THEREFORE, the Mortgagor to secure the payment of the said principal sum of money and said interest and in accordance with the terms, provisions and limitations of this mortgage, and the performance of the covenants and agreements herein contained, by the Mortgagor to be performed, and also in consideration of the sum of Ten Dollars (\$10.00) in hand paid, the receipt whereof is hereby acknowledged, does by these presents convey and warrant unto the Mortgagee, and the Mortgagee's successors and assigns, the following described real estate, and all of his right, title and interest therein, located in the City of Chicago, County of Cook, State of Illinois to wit:

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THE SOUTH 40 FEET OF LOT 11 IN THE SUBDIVISION OF THE EAST 315 FEET OF THE NORTHEAST ¼ OF THE NORTHEAST ¼ OF THE NORTHWEST ¼ OF SECTION 10, TOWNSHIP 38 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Address of Premises: 4750 S. King Dr., Chicago, IL 60615  
Permanent Real Estate Index No.: 20-10-105-018-0000

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

Including all buildings and other improvements now or at any time hereafter constructed or erected upon or located at the Premises, together with and including, but not limited to, all fixtures, equipment, machinery, appliances and other articles and attachments now or hereafter forming part of, attached to or incorporated in any such buildings or improvements, all leasehold estates, right, title and interest of Mortgagor in any and all leases, together with all cash or security deposits, advance rentals and other deposits or payments of a similar nature given in connection with any leases, all rents, income and other benefits now or hereafter derived from the Premises under the leases or otherwise, any interest, estate or other claim, both in law and in equity, which Mortgagor now has or may hereafter acquire in the Premises, to have and to hold the Premises mortgaged and conveyed onto the Mortgagee forever, free from all rights and benefits under and by virtue of the Homestead Exemption Laws of the State of Illinois, which rights and benefits are hereby expressly released and waived, for the uses and purposes herein set forth, together with all right to retain possession of the Premises after any default in the payment of all or any part of the indebtedness hereby secured, or the breach of any covenant or agreement herein contained, or upon the occurrence of any event of default.

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 the Mortgagee receipts thereof. To prevent a 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.

Mortgagor shall: (a) promptly repair, restore or rebuild any buildings or improvements now or hereafter on the Premises which may become damaged or destroyed; (b) keeps the 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 thereof; (c) 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 the Mortgagee; (d) comply with all requirements of law or municipal ordinances with respect to the Premises and the use thereof, and (e) make no material alterations in said Premises except as required by law or municipal ordinance.

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Mortgagor shall keep all buildings and improvements now or hereafter situated on said Premises insured against loss or damage by fire, lightning and wind storm 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 Mortgagee, under insurance policies payable, in case of loss or damage, to Mortgagee, 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 the Mortgagee, and in case of insurance about to expire, shall deliver renewal policies not less than ten (10) days prior to the respective dates of expiration.

At such time as the Mortgagor is not in default either under the terms of the Note secured hereby or under the terms of this mortgage, the Mortgagor shall have such privilege of making prepayments on the principal of said Note, in addition to the required payments, as may be provided in said Note.

In case of default therein, Mortgagee 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 monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including attorney's fees, and any other monies advanced by Mortgagee to protect the Premises and the lien hereof, shall be additional indebtedness secured hereby and shall become immediately due and payable without notice and with interest thereon at the highest rate now permitted by Illinois law. Inaction of Mortgagee shall never be considered as a waiver of any right accruing to the Mortgagee on account of any default hereunder on the part of Mortgagor.

In the event that any laws of the United States of America or of any state having jurisdiction in the Premises, any tax is due or becomes due in connection with the issuance of the Note secured by this mortgage, the Mortgagor covenants and agrees to pay such tax in the manner required by any such law. The Mortgagor further covenants to hold harmless and agrees to indemnify the Mortgagee as well as the Mortgagee's successors or assigns against any liability incurred by reason of the imposition of any tax on the issuance of the Note secured by this mortgage.

In the event of the enactment after this date of any law of Illinois deducting from the value of the Premises for the purpose of taxation any lien thereon, or imposing upon the Mortgagee the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages for the Mortgagee's interest in the Premises, or the manner of collection of taxes, so as to effect this mortgage or the debt secured hereby, then and in any such event, the Mortgagor upon demand by the

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Mortgagee, shall pay such taxes or assessments, or reimburse the Mortgagee therefore; provided, that if in the opinion of counsel for the Mortgagee: (a) it might be unlawful to require Mortgagor to make such payment; or (b) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then and in such event, the Mortgagee may elect, by notice in writing given to Mortgagor, to declare all of the indebtedness secured hereby to be and become due and payable sixty (60) days from the giving of such notice.

The Mortgagee shall have the right to inspect the Premises at all reasonable times and access thereto shall be permitted for that purpose.

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 Mortgagee and without notice to Mortgagor, all unpaid indebtedness secured by this mortgage shall, not withstanding anything in the Note or in this mortgage 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 three (3) days in the performance of any other agreement of the Mortgagor herein contained.

When the indebtedness hereby shall become due whether by acceleration or otherwise, Mortgagee 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 judgment for sale, all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for attorneys' fees, appraisers' fees, outlays for documentary and expert evidence, transcription charges, publication costs and all other costs including, but not limited to, the procuring of abstracts of title, title searches and examinations, title insurance policies, Torrens certificates, and similar data and assurances with respect to title as Mortgagee 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 judgment the true condition of the title to or the value of the Premises. All expenditures and expenses of the nature stated in this paragraph shall become additional indebtedness secured hereby and immediately due and payable with interest thereon at the highest rate now permitted by Illinois law, when paid or incurred by Mortgagee in connection with: (a) any proceeding, including probate and bankruptcy proceedings, to which the Mortgagee shall be a party, either as plaintiff, claimant or defendant, by reason of this mortgage or any indebtedness hereby secured; (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 actual or threatened suit or proceeding which might affect the Premises or the security thereof.

The proceeds of any foreclosure sale of the Premises shall be distributed and applied in the following order of priority:

- a. First, on account of all costs and expenses incident to the foreclosure proceeding, including all such items as are mentioned in the

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proceeding paragraph hereof;

- b. Second, all other items which under the terms hereof can constitute secured indebtedness additional to that evidenced by the Note, with interest thereon as herein provided;
- c. Third, all principal and interest remaining unpaid on the Note; and
- d. Fourth, any overage to Mortgagor his heirs, legal representatives or assigns as their rights may appear.

At, or anytime after the filing of a complaint to foreclose this mortgage the court in which such complaint is filed may appoint a receiver for said Premises. Such appointment may be made either before or after the 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 Mortgagee may be appointed as such receiver. Such receiver shall have the power to collect rents and profits of said Premises during the pendency of such foreclosure suit and, in case of a sale and a deficiency, during the full statutory period of redemption, whether there will be a 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 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 thereby received to: (a) the indebtedness secured hereby, or by any judgment foreclosing this mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or of such judgment, provided such application is made prior to foreclosure sale; and (b) the deficiency in case of a sale and deficiency.

The Mortgagee making any payment 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.

If the payment of said indebtedness or any part thereof be extended or varied or if any part of this security be released, all persons now or at anytime hereafter liable therefore, or interested in said Premises, shall be held to assent to such extension, variation or release, and their liability in the lien and all provisions hereof shall continue in full force, the right of recourse against all such persons being expressly reserved by the Mortgagee, notwithstanding such extension, variation or release.

No action for the enforcement of the lien or 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 thereby secured.

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This mortgage 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 mortgage. The word "Mortgagee" when used herein shall include the successors and assigns of the Mortgagee named herein and the Holder or Holders from time to time, of the Note secured hereby.

The Mortgagor shall periodically deposit with the Mortgagee such sums as the Mortgagee may reasonably require for the payment of taxes and assessments on the Premises. No such deposit shall bear any interest.

Any notice which any party hereto may desire or may be required to give to any other party shall be in writing, and the personal delivery thereof or electronic, facsimile transmission thereof, or the passage of three (3) days after the mailing thereof by registered or certified mail, return receipt requested, or upon the next business day after timely and proper deposit, charges paid, with any overnight carrier with respect to next day service, to the addresses initially specified herein, or to such other place or places as any party hereto may by notice in writing designate, shall constitute service of notice hereunder.

Time is of the essence hereof and of the Note and all other instruments delivered in connection with the indebtedness.

IN WITNESS WHEREOF, Mortgagor has caused this instrument to be executed on the day and year first written above.

  
 \_\_\_\_\_  
 GARY A. FOSTER

  
 \_\_\_\_\_  
 PAMELA M. FOSTER

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STATE OF ILLINOIS     )  
  )  
COUNTY OF COOK     )

I, the undersigned Notary Public in and for said county in the state aforesaid, does hereby certify that GARY A. FOSTER AND PAMELA M. FOSTER are personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed, sealed and delivered the said instrument as their free and voluntary act, for the uses and purposes herein set forth, including the release and waiver of the right of homestead.

Given under my hand and official seal on June 8, 2006.

*Izabela H. Zielinski*  
\_\_\_\_\_  
NOTARY PUBLIC



Commission expires: 07/24/07

This instrument was prepared by Michael B. Elman, 10 South LaSalle Street, Suite 1420, Chicago, Illinois 60603.

Mail this instrument to:

Michael B. Elman  
Michael B. Elman & Associates, Ltd.  
10 South LaSalle Street, Suite 1420  
Chicago, Illinois 60603