

UNOFFICIAL COPY

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1998-12-17 11:55:37  
Cook County Recorder 35.00



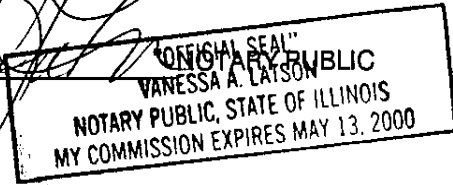
08147781

I, PATRICE M. CONNOLLY OF CHICAGO TITLE INSURANCE COMPANY, DO HEREBY CERTIFY THAT THE MORTGAGE AND SECURITY AGREEMENT BETWEEN CHARLES L. PAGE AND CHARLES J. ASCHAUER, JR. IS A TRUE AND CORRECT COPY OF THE ORIGINAL INSTRUMENT.

SIGNATURE

I, THE UNDERSIGNED, A NOTARY PUBLIC IN AND FOR THE SAID COUNTY, IN THE STATE AFORESAID, CERTIFIES THAT PATRICE M. CONNOLLY, RESPECTIVELY APPEARED BEFORE ME THIS DATE IN PERSON AND ACKNOWLEDGED THAT HE/SHE DELIVERED THE SAID INSTRUMENT AS HIS/HER OWN FREE AND VOLUNTARY ACT, FOR THE USER AND PURPOSES THEREIN.

GIVEN UNDER MY HAND AND NOTARIAL SEAL THIS 15TH DAY OF DECEMBER, 1998



2756471 RB  
Handwritten initials and scribbles

BOX 333-CT1

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

Jacqueline Shim Bryant  
Aronberg Goldgehn Davis &  
Garnisa  
One IBM Plaza - Suite 3000  
Chicago, Illinois 60611

Location:  
110 Evergreen  
Winnetka, IL 60093

PIN: 05-20-319-034 0000

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Space above this Line for Recorder's Use Only

## MORTGAGE AND SECURITY AGREEMENT

**THIS MORTGAGE AND SECURITY AGREEMENT ("Mortgage")** made as of the 17th day of August, 1998 by Charles L. Page, an individual residing in the State of Illinois ("Mortgagor"), and Charles J. Aschauer, Jr., an individual residing in the State of Illinois ("Mortgagee");

### WITNESSETH THAT:

**WHEREAS**, Mortgagor has herewith executed and delivered to Mortgagee a promissory note bearing even date herewith in the principal sum of Seven Hundred Ninety Thousand and 00/100 (\$776,300.00) ("Note"), made payable to Mortgagee whereby Mortgagor promises to pay the said principal sum and interest thereon at the rate and in installments as provided in such Notes, with a final payment of the balance under the Notes due on the earlier of (a) February 17, 2000 or (b) the closing of the sale by Mortgagor of the property located at 110 Evergreen, Winnetka, Illinois, all of said principal and interest being payable at such place as the holder or holders thereof ("Holders") may, from time to time, in writing appoint, and in the absence of such appointment, then at 1160 Romona, Wilmette, Illinois 60091.

**NOW, THEREFORE**, Mortgagor, in consideration of said debt and to secure the payment of both principal and interest, in accordance with the terms and provisions of the Note and in accordance with the terms, provisions and limitations of this Mortgage, and to secure the performance of the covenants and agreements herein and in the Note contained, to be performed by Mortgagor, does hereby MORTGAGE, GRANT, BARGAIN, SELL and CONVEY unto Mortgagee, its successors and assigns, its estate in fee simple, forever, in the real estate situated

in the Village of Winnetka, County of Cook, State of Illinois ("Premises"), described in the attached Exhibit A.

Mortgagor represents and covenants that he has good right, full power and lawful authority to convey and mortgage the same.

**TO HAVE AND TO HOLD** the Premises unto the said Mortgagee, its successors and assigns, forever, for the purposes and uses herein set forth, together with the right to possession of the Premises.

**THIS MORTGAGE IS GIVEN TO SECURE:** (a) payment of the indebtedness evidenced by the Note (together with any and all amendments or supplements thereto, extensions thereof and notes which may be taken in whole or partial renewal, substitution or extension thereof, or, which may evidence any of the indebtedness secured hereby) and (b) payment by Mortgagor to Mortgagee as herein provided of all sums expended or advanced by Mortgagee pursuant to any term or provision of this Mortgage. The Note, the Mortgage and any other documents evidencing and securing the obligations reflected herein, are referred to collectively herein as the "Loan Documents."

**IT IS FURTHER UNDERSTOOD AND AGREED THAT:**

1. Indemnity. Mortgagor hereby agrees that no liability shall be asserted or enforced against Mortgagee in the lawful exercise of the rights and powers granted to Mortgagee in this Mortgage, and Mortgagor hereby expressly waives and releases any such liability. Except for the gross negligence or willful misconduct of Mortgagee, Mortgagor shall indemnify and save Mortgagee harmless from and against any and all liabilities, collections, losses, damages, claims, costs and expenses (including reasonable attorneys' fees and court costs) of whatever kind or nature which may be imposed on, incurred by or asserted against Mortgagee at any time by any third party which relate to or arise from: any suit or proceeding (including probate and bankruptcy proceedings), or the threat thereof, in or to which Mortgagee may or does become a party, either as plaintiff or as a defendant, by reason of this Mortgage or for the purpose of protecting the lien of this Mortgage; the offer for sale or sale of all or any portion of the Premises; and/or the ownership, leasing, use, operation or maintenance of the Premises. All costs provided for herein and paid for by Mortgagee shall be so much additional indebtedness secured hereby and shall become immediately due and payable without notice and with interest.

2. Effect of Extensions of Time. If the payment of the debt secured hereby or any part thereof be extended or varied or if any part of the security granted to secure such indebtedness be released, all persons now or at any time hereafter liable therefor, or interested in the Premises, or having an interest in Mortgagor or in the beneficiary of Mortgagor, shall be held to assent to such extension, variation or release, and their liability and the lien and all provisions hereof shall continue in full force, the right of recourse against all such persons being expressly reserved by Mortgagee, notwithstanding such extension, variation or release.

Any person, firm or corporation taking a junior mortgage or other lien upon the Premises or any interest therein, shall take the said lien subject to the rights of the Mortgagee to amend, modify and supplement this Mortgage, or the Note and to extend the maturity of the debt secured hereby, in each and every case without obtaining the consent of the holder of such junior lien and without the lien of this Mortgage losing its priority over the rights of any such junior lien.

3. Mortgagee's Performance of Defaulted Acts and Expenses Incurred by Mortgagee. Upon the occurrence of an Event of Default, Mortgagee may, but need not, make any payment or perform any act required herein or in the Note or any of the other Loan Documents 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 the Premises or consent to any tax or assessment or cure any default of Mortgagor in any lease of the Premises. All monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including reasonable attorneys' fees, shall be so much additional indebtedness secured hereby, and shall become immediately due and payable without notice and with interest thereon at the Default Rate. In addition to the foregoing, any costs, expenses and fees, including attorneys' fees, incurred by Mortgagee in connection with (a) sustaining the lien of this Mortgage or its priority, (b) protecting and enforcing any of Mortgagee's rights hereunder, (c) recovering any indebtedness secured hereby, (d) any litigation or proceedings affecting repayment of the Note, this Mortgage, the Premises, including without limitation, bankruptcy and probate proceedings, or (e) preparing for the defense or participation in any litigation or proceedings, shall be so much additional indebtedness secured hereby, and shall become immediately due and payable without notice and with interest thereon at the Default Rate. The interest accruing under this Section shall be immediately due and payable by Mortgagor to Mortgagee, and shall be additional indebtedness evidenced by the Note and secured by this Mortgage. Inaction of Mortgagee shall never be considered as a waiver of any right accruing to it on account of any default on the part of Mortgagor.

4. Acceleration of Indebtedness in Event of Default. Any one of the following events shall constitute an Event of Default under this Mortgage: if (a) an Event of Default shall occur under the Note, as defined herein; or (b) Mortgagor shall file a petition in voluntary bankruptcy or under Chapter 7 or Chapter 11 or Chapter 13 of the Federal Bankruptcy Code or any similar law, state or federal, whether now or hereafter existing and which shall not be discharged within 90 days of such filing; or (c) any order for relief of the Mortgagor shall be entered under Title 11 of the United States Code which shall not be discharged within 90 days of the entry of such order, or a trustee or a receiver shall be appointed for Mortgagor or for all of the Premises or the major part thereof of Mortgagor in any involuntary proceeding which shall not be discharged within 90 days of such filing, or any court shall have taken jurisdiction of the Premises or the major part thereof in any involuntary proceeding for the reorganization, dissolution, liquidation or winding up of Mortgagor; or (d) Mortgagor shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due, or shall consent to the appointment of a receiver or trustee or liquidator of the Premises or the major part thereof; or (e)

default shall be made in the due observance or performance of any other of the covenants, agreements or conditions hereinbefore or hereinafter contained, required to be kept or performed or observed by Mortgagor, which shall not have been cured within 60 days prior written notice thereof from Mortgagee; or (f) the existence of any material inaccuracy or untruth at the time made in any material representation, covenant or warranty contained in this Mortgage or in any other statement or certification as to facts delivered to Mortgagee by Mortgagor; or (g) Mortgagor shall be in default under any note secured by a trust deed or mortgage subordinate to this lien; or (h) any junior lienholder brings an action in the nature of foreclosure on the Property due to Mortgagor's default under any promissory note secured thereby, then and in every such case the whole of said principal sum hereby secured shall, at once at the option of Mortgagee, become immediately due and payable, together with accrued interest thereon, without notice to Mortgagor.

5. Expense of Litigation. All expenditures and expenses and fees as may be incurred in the protection of the Premises and the maintenance of the lien of this Mortgage, including the reasonable attorneys' fees incurred by Mortgagee in any litigation or proceeding affecting this Mortgage, the Note or the Premises, or in preparation for the commencement or defense of any proceeding or threatened suit or proceeding, shall be immediately due and payable by Mortgagor, with interest thereon and shall be secured by this Mortgage.

6. Condemnation. Mortgagor hereby assigns, transfers and sets over unto Mortgagee the entire proceeds of any award or any claim for damages for any of the Premises taken or damaged under the power of eminent domain or by condemnation; provided, however, that so long as no Event of Default has occurred under the Note of this Mortgage, Mortgagor shall have the right to settle any award or claim for damages with the consent of Mortgagee; further provided that if Mortgagor applies such proceeds to the purchase of a new dwelling, Mortgagee's sole right shall be to a mortgage on such new dwelling substantially similar to this mortgage.

7. Release upon Payment and Discharge of Mortgagor's Obligations. If Mortgagor shall fully pay all principal and interest on the Note and all other indebtedness secured hereby, then this Mortgage shall be null and void. Mortgagee shall release this Mortgage and the lien thereof by proper instrument upon payment and discharge of all indebtedness secured hereby.

8. Giving of Notices. Any notice or demand which either party hereto may desire or be required to give to the other party shall be in writing, and shall be deemed given (i) if and when personally delivered, or (ii) upon receipt if sent by United States certified mail, return receipt requested with proper postage prepaid, or (iii) on the next business day if sent by a nationally recognized overnight courier, for morning delivery, addressed to Mortgagor at the Premises or to Mortgagee at its address as stated herein.

9. Binding on Successors and Assigns. This Mortgage and all provisions hereof shall be binding upon Mortgagor and all persons claiming under or through Mortgagor, and shall inure to the benefit of the Holders from time to time of the Note and of the successors and assigns of the Mortgagee. This document shall at all times be governed by the laws of the State of Illinois.

10. Partial Invalidity; Maximum Allowable Rate of Interest. Mortgagor and Mortgagee intend and believe that each provision in this Mortgage and the Note comports with all applicable local, state and federal laws and judicial decisions. However, if any provision or provisions, or if any portion of any provision or provisions, in this Mortgage or the Note is found by a court of law to be in violation of any applicable local, state or federal ordinance, statute, law, administrative or judicial decision, or public policy, and if such court should declare such portion, provision or provisions of this Mortgage and the Note to be illegal, invalid, unlawful, void or unenforceable as written, then it is the intent both of Mortgagor and Mortgagee that such portion, provision or provisions shall be given force to the fullest possible extent that they are legal, valid and enforceable, that the remainder of this Mortgage and the Note shall be construed as if such illegal, invalid, unlawful, void or unenforceable portion, provision or provisions were not contained therein, and that the rights, obligations and interest of Mortgagor and Mortgagee under the remainder of this Mortgage and the Note shall continue in full force and effect.

11. Remedies Cumulative and Non-Waiver. No remedy or right of the Mortgagee hereunder or under the Note, or available under applicable law, shall be exclusive of any other right or remedy, but each such remedy or right shall be in addition to every other remedy or right now or hereafter existing under any such document or under applicable law. No delay in the exercise of, or omission to exercise, any remedy or right accruing on any Event of Default shall impair any such remedy or right or be construed to be a waiver of any such Event of Default or an acquiescence therein, nor shall it affect any subsequent Event of Default of the same or a different nature, nor shall it extend or affect any grace period. Every such remedy or right may be exercised concurrently or independently, when and as often as may be deemed expedient by the Mortgagee. All obligations of the Mortgagor and all rights, powers, and remedies of the Mortgagee expressed herein shall be in addition to, and not in limitation of, those provided by law or in the Note or in any of the Loan Documents or any other written agreement or instrument relating to any of the indebtedness secured hereby or any security therefor.

IN WITNESS WHEREOF, Mortgagor has caused these presents to be executed the day and year first above written.

  
 Charles L. Page

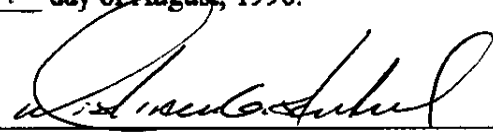
STATE OF ILLINOIS        )  
   ) SS  
 COUNTY OF COOK         )

The undersigned, a Notary Public in and for said County, in the State aforesaid, does hereby certify that Charles L. Page, personally known or proven to me to be the same person whose name is subscribed to the foregoing instrument appeared before me this day in person and

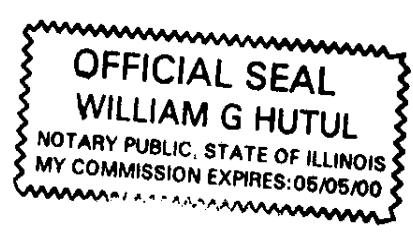
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acknowledged that he signed and delivered the said instrument as his own free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal this 27<sup>th</sup> day of August, 1998.

  
\_\_\_\_\_  
Notary Public

Commission expires:



Property of Cook County Clerk's Office

# UNOFFICIAL COPY

08147781

**STREET ADDRESS:** 110 EVERGREEN

**CITY:** WINNETKA

**COUNTY:** COOK

**TAX NUMBER:** 05-20-319-034-0000

**LEGAL DESCRIPTION:**

LOT 2 IN THORN TREE SUBDIVISION OF ALL OF LOT 'A' AND PART OF LOT 'B' IN HELEN BAKER JENNER'S SUBDIVISION OF PART OF THE EAST 10 ACRES OF THE SOUTH 20 ACRES OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 20, TOWNSHIP 42 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

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