

UNOFFICIAL COPY

86334453

THIS INSTRUMENT PREPARED BY:

J. BOTTICCHIO
WHEN RECORDED MAIL TO:
HOME SAVINGS OF AMERICA
P.O. BOX 7075
PASADENA, CALIFORNIA 91109-7075

ALL NOTICES TO LENDER SHALL BE
MAILED OR DELIVERED TO THE ABOVE
ADDRESS.

Mortgage and Assignment of Rents ADJUSTABLE INTEREST RATE LOAN

LOAN NO. 661122-2

This Mortgage, made this 25th day of JULY, 1996, between
SALVADOR A. VIVIT AND MONINA U. VIVIT, HUSBAND AND WIFE

herein called BORROWER, whose address is 9315 PARKSIDE AVENUE

(number and street)

DES PLAINES
(city)

IL
(state)

60016
(zip code)

and

and HOME SAVINGS OF AMERICA, F.A., a corporation herein called LENDER, whose address is P.O. Box 7075, Pasadena, California 91109-7075.

WITNESSETH: Borrower hereby grants, conveys, mortgages and warrants to Lender the real property legally described as follows:

LOT 12 IN BLOCK 3 IN WILLIAM ALTA SUBDIVISION OF THE SOUTH 25 ACRES (EXCEPT THAT PART THEREOF TAKEN FOR WESTERN AVENUE) AS PER DOCUMENT 12269286 OF THE EAST HALF OF THE EAST HALF OF THE NORTH EAST QUARTER OF SECTION 15, TOWNSHIP 41 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

COMMONLY KNOWN AS 9315 PARKSIDE AVENUE, DES PLAINES, IL. 60016

PTN: 09-15-202-014



13.00

COOK COUNTY, ILLINOIS
DEED RECORD

1996 JUL -5 AM 10:36

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Together with all interest which Borrower now has or may hereafter acquire in or to said property, and in and to (a) all easements and rights of way appurtenant thereto; and (b) all buildings, structures, improvements, fixtures and appurtenances now or hereafter placed thereon, including, but not limited to, all apparatus and equipment, whether or not physically affixed to the land or any building, used to provide or supply air-cooling, air-conditioning, heat, gas, water, light, power, refrigeration, ventilation, laundry, drying, dishwashing, garbage disposal or other services; and all waste vent systems, antennas, pool equipment, window coverings, drapes and drapery rods, carpeting and floor covering, awnings, ranges, ovens, water heaters and attached cabinets, it being intended and agreed that such items be conclusively deemed to be affixed to and to be part of the real property that is conveyed hereby; and (c) all water and water rights (whether or not appurtenant). Borrower agrees to execute and deliver, from time to time, such further instruments as may be requested by Lender to confirm the lien of this Mortgage on any such properties. The properties conveyed to Lender hereunder are hereinafter referred to as "such property."

The Borrower absolutely and irrevocably grants, transfers and assigns to Lender the rents, income, issues, and profits of all property covered by this Mortgage.

FOR THE PURPOSE OF SECURING:

- (1) Payment of the sum of \$ 117,000.00 with interest thereon, according to the terms of a promissory note of even date herewith and having a final maturity date of AUGUST 10, 2013 made by Borrower, payable to Lender or order, and all modifications, extensions or renewals thereof. (2) Payment of such sums as may be incurred, paid out, or advanced by Lender, or may otherwise be due to Lender, under any provision of this Mortgage and all modifications, extensions or renewals thereof. (3) Performance of each agreement of Borrower contained herein or incorporated herein by reference or contained in any papers executed by Borrower relating to the loan secured hereby. (4) Performance, if the loan secured hereby or any part thereof is for the purpose of constructing improvements on such property, of each provision or agreement of Borrower contained in any building loan agreement or other agreement between Borrower and Lender relating to such property. (5) The performance and keeping by Borrower of each of the covenants and agreements required to be kept and performed by Borrower pursuant to the terms of any lease and any and all other instruments creating Borrower's interest in or defining Borrower's right in respect to such property. (6) Compliance by Borrower, with each and every monetary provision to be performed by Borrower under any declaration of covenants, conditions and restrictions pertaining to such property or any declaration of condominium ownership and upon written request of Lender, the enforcement by Borrower of any covenant to pay maintenance or other charges, if the same have not been paid or valid legal steps taken to enforce such payment within 90 days after such written request is made. (7) At Lender's option, payment, with interest thereon, of any other present or future indebtedness or obligation of Borrower (or of any successor in interest of Borrower to such property) due to Lender, whether created directly or acquired by absolute or contingent assignment, whether due or not, whether otherwise secured or not, or whether existing at the time of the execution of this Mortgage or arising thereafter, the exercise of such option to be evidenced by a notice in writing to Borrower or any successor in interest of Borrower. (8) Performance of all agreements of Borrower to pay fees and charges to the Lender as set forth herein and set forth in interest of Borrower. (9) Payment of charges, as allowed by law when such charges are made, for any statement required to be filed in connection with the application secured hereby.

BOX 169

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REF # 15233

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(1) Construction or Improvement. Any building or improvement or repair relating to the property... to pay when due all costs and liabilities... to complete the project...

(2) Repair and Maintenance of Property. To keep such property in good condition and repair... to pay when due all claims for labor performed and materials furnished...

(3) Fire and Casualty Insurance. To provide and maintain in force at all times fire and other types of insurance with respect to such property... to pay when due all claims for labor performed and materials furnished...

(4) Life, Health or Accident Insurance. If Borrower shall maintain life, accident or health insurance and Lender shall be the owner or holder of any policy of such insurance as further security hereunder, Lender may elect to pay any premiums thereon as to which Borrower shall be in default, and the amount so paid may be secured hereby.

(5) Taxes and Other Liabilities Due. To pay, satisfy and discharge: (a) at least ten (10) days before delinquency, all general and special taxes affecting such property; (b) when due, all special assessments for public improvements; (c) on demand of Lender but in no event later than the date such amounts become due; (1) all encumbrances, charges and liens, in interest, on such property, or any part thereof, which are or appear to be payable to or in favor of or for or in respect to or in connection with the property; (2) all costs, fees and expenses of this mortgage, or not described herein; (3) fees or charges for any statement regarding the obligation secured hereby in any amount demanded by Lender not to exceed the maximum amount allowed by law... (4) any amount other charges as the Lender may deem reasonable for services rendered by Lender and Lender's agent, attorney, or other persons in connection with the mortgage...

(6) Impounds. To pay to Lender, in addition to any other payments required hereunder, monthly advance installments, as determined by Lender, for taxes, assessments, insurance, ground rents or other obligations secured by this mortgage... to pay when due all claims for labor performed and materials furnished...

(7) Condemnation and Injury to Property. All sums due, paid or payable to Borrower or any such obligor in interest to Borrower of such property, whether by way of judgment, settlement or otherwise, for injury or damage to such property or in connection with any condemnation or other public use or injury to such property... to pay when due all claims for labor performed and materials furnished...

(8) Disposition of the Proceeds of any Insurance Policy, Condemnation or other Recovery. The amount received by Lender pursuant to this mortgage under any fire or other insurance policy, in connection with any condemnation for public use or injury to such property... to pay when due all claims for labor performed and materials furnished...

(9) Litigation. Borrower shall defend the title to the property and shall indemnify and hold Lender harmless from all claims for damages or costs... to pay when due all claims for labor performed and materials furnished...

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(11) **Prepayment Charge.** Should any note or obligation secured hereby provide any fee for prepayment of any of the indebtedness secured hereby, to pay said fee notwithstanding, Borrower shall have defaulted in any obligation secured hereby and Lender, by reason thereof, shall have declared all sums secured hereby immediately due and payable.

(12) **Failure of Borrower to Comply with Mortgage.** Should Borrower fail to make any payment, or fail to do any act required in this Mortgage, or fail to perform any obligation secured by this Mortgage, or do any act Borrower agreed not to do, Borrower shall be in default under this Mortgage. Lender, but without obligation so to do and without notice to or demand upon Borrower and without releasing Borrower from any obligation hereof, and without contesting the validity or amount of the same, may (a) pay or do the same in such manner and to such extent as it may deem necessary to protect the security hereof, Lender being authorized to enter upon such property for such purposes, (b) pay, purchase, contest or compromise any encumbrance, charge or lien, which in its judgment is or appears to be prior or superior hereto, and (c) in exercising any such power pay necessary expenses. Borrower agrees to repay any amount so expended on demand of Lender.

(13) **Sums Advanced to Bear Interest and To Be Added to Indebtedness.** To pay immediately upon demand any sums advanced or paid by Lender or Borrower under any clause or provision of this Mortgage. Any such sum, until so repaid, shall be secured herein and bear interest from the date it was advanced or paid at the same interest rate, as may be adjusted from time to time, as such indebtedness, and shall such sum and interest thereon be secured by this Mortgage.

(14) **Application of Funds.** Lender shall have the right at its sole discretion to direct the manner in which payments or proceeds shall be applied upon or allocated among the various items constituting Borrower's indebtedness or obligations secured hereby.

(15) **Obligation of Borrower Joint and Several.** If more than one person is named as Borrower, each obligation of Borrower shall be the joint and several obligation of each such person.

(16) **Acceleration Clause: Right of Lender to Declare All Sums Due on any Transfer, Etc.** Lender shall have the right, at its option, to declare any indebtedness and obligations secured hereby, irrespective of the maturity date specified in any note or agreement evidencing the same due and payable within 30 days after such declaration if (a) Borrower or any successor in interest to Borrower of such property sells, enters into a contract of sale, conveys or alienates such property or any part thereof, or suffers his title or any interest therein to be divested, whether voluntarily or involuntarily or leases such property or any part thereof for a term of more than 3 years, or changes or permits to be changed the character or use of such property, or drills or extracts or enters into a lease for the drilling for or extracting oil, gas or other hydrocarbon substance or any mineral of any kind or character on such property; or (b) Borrower is a partnership and the interest of a general partner is assigned or transferred, or (c) Borrower is a corporation and more than 25% of the corporate stock thereof is sold, transferred or assigned during a 12 month period; or (d) Borrower is a trust and there is a change of beneficial interest with respect to more than 25% of such property; or (e) Borrower has made any material misrepresentation or failed to disclose any material fact in those certain financial and other written representations and disclosures made by Borrower in order to induce Lender to enter into the transaction evidenced by the promissory note or notes or agreements which this Mortgage secures.

(17) **No Waivers by Lender.** No waiver by Lender of any right under this Mortgage shall be effective unless in writing. Waiver by Lender of any right granted to Lender under this Mortgage or of any provision of this Mortgage as to any transaction or occurrence shall not be deemed a waiver as to any future transaction or occurrence. By accepting payment of any sum secured hereby after its due date or by making any payment or performing any act on behalf of Borrower that Borrower was obligated hereunder, but failed, to make or perform, or by adding any payment so made by Lender to the indebtedness secured hereby, Lender does not waive its right to require prompt payment when due of all other sums so secured or to require prompt performance of all other acts required hereunder, or to declare a default for failure so to pay such other sums or to perform such other acts.

(18) **Modification in Writing.** This Mortgage cannot be changed or modified except as otherwise provided in this Mortgage or by agreement in writing signed by Borrower, or any successor in interest to Borrower, and Lender.

(19) **Right to Collect and Receive Rents and Profits.** Notwithstanding any other provisions hereof, Lender hereby grants permission to Borrower to collect and retain the rents, income, issues and profits of such property as they become due and payable, but Lender reserves the right to revoke such permission at any time with or without cause by notice in writing to Borrower, mailed to Borrower at his last known address. In any event, such permission to Borrower automatically shall be revoked upon default by Borrower in payment of any indebtedness secured hereby or in the performance of any agreement hereunder. On any such default, Lender may at any time without notice, either in person, by agent, or by receiver to be appointed by the court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of such property, or any part thereof, make, cancel, enforce or modify leases; obtain and evict tenants; set or modify rents; in its own name sue for or otherwise collect the rents, income, issues and profits thereof, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, upon any indebtedness secured hereby and in such order as Lender may determine, and except for such application, Lender shall not be liable to any person for the collection or non-collection of any rents, income, issues or profits, nor the failure to assert or enforce any of the foregoing rights. The entering upon and taking possession of such property, the collection of such rents, income, issues or profits, the doing of other acts herein authorized, and the application thereof as aforesaid, shall not cure or waive any default or notional default hereunder or invalidate any act done pursuant to such notice.

(20) **Remedies.** No remedy herein provided shall be exclusive of any other remedy herein or now or hereafter existing by law, but shall be cumulative. Every power or remedy hereby given to Borrower or to Lender or to which either of them may be otherwise entitled, may be exercised from time to time and as often as may be deemed expedient by them, and either of them may pursue inconsistent remedies. If Lender holds any additional security for any obligation secured hereby, it may enforce the sale thereof at its option, either before, contemporaneously with, or after any Mortgagee's sale is made hereunder, and on any default of Borrower, Lender may, at its option, offset against any indebtedness owing by it to Borrower, the whole or any part of the indebtedness secured hereby. The Lender is hereby authorized and empowered at its option, without any obligation so to do, and without affecting the obligations hereof, to apply toward the payment of any indebtedness secured hereby, any and all sums or money, or credits of or belonging to Borrower and which the Lender may have in its possession or under its control, including, among other things, any impounds held by Lender under paragraph (6) hereof.

In order to assure the definiteness and certainty of the rights and obligations herein provided, Borrower waives any and all rights of offset which Borrower now or hereafter may have against Lender, of claims and no offset made by Lender shall relieve Borrower from paying installments on the obligations secured hereby as they become due.

(21) **Foreclosure of Mortgage.** When the indebtedness hereby secured shall become due whether by acceleration or otherwise, the Lender 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 of sale all expenditures and expenses which may be paid or incurred by or on behalf of Lender for attorneys' fees, appraisers' fees, outlays for documentary and expert evidence, stenographer's charges, publication cost and costs of procuring all abstracts of title or commitments for title insurance. Such fees, charges and costs may be estimated as to items to be expended after entry of the decree as Lender may deem 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 Property. All expenditures and expenses of the nature of this paragraph mentioned shall become so much additional indebtedness secured hereby and shall be immediately due and payable with interest thereon at the rate specified in the Note. Such expenditures and expenses shall include expenditures made in connection with (a) any proceeding to which Lender shall be a party, either as plaintiff, claimant or defendant, by reason of this Mortgage or any indebtedness hereby secured; (b) preparation for the commencement of any suit for foreclosure hereof after accrual of such right to foreclose whether or not actually commenced; (c) preparations for the defense of any threatened suit or proceeding which might affect the Property or the security hereof, whether or not actually commenced; (d) any efforts for collection of any past due indebtedness secured hereby. The proceeds of any foreclosure sale of the Property 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 this paragraph hereof; second, all other items which under the terms hereof constitute indebtedness secured by this Mortgage; third, any surplus to Borrower, his legal representatives or assigns, as their rights may appear.

(22) **Appointment of Receiver.** Upon or at any time after the filing of a complaint to foreclose this Mortgage the court in which such complaint filed may appoint a receiver of the property or may appoint Lender as Mortgagee in possession. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of the person or persons, if any, liable for the payment of the indebtedness secured hereby and without regard to the then value of the property, whether the same shall be then occupied as a homestead or not. Such receiver or Mortgagee in possession shall have power to collect the rents, issues and profits of the premises during the pendency of such foreclosure suit, as well as during any further times when Borrower, his successors or assigns, 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 property during the whole said period. The court from time to time may authorize the receiver or Mortgagee in possession to apply the rents, income held by either of them in payment in whole or in part of the indebtedness and other sums secured hereby, or in payment of any special assessment or other lien which may be or become superior to the lien hereof or superior to a decree foreclosing this Mortgage, provided such application is made prior to foreclosure sale. In case of a judicial sale, the property, or so much thereof as may then be affected by this Mortgage, may be sold in one parcel.

(23) **Waiver of Statute of Limitations.** Time is of the essence as to all of Borrower's obligations hereunder, and to the extent permitted by law, Borrower waives all present or future statutes of limitation with respect to any debt, demand or obligation secured hereby in any action or proceeding for the purpose of enforcing this Mortgage or any rights or remedies hereunder.

86334453

My commission expires _____
 Given under my hand and official seal this _____ day of _____ 19____
 Notary Public

Property of Cook County

State of Illinois
 County of _____

Signature of Borrower
 SALVADOR A. VIVIT
 MENINA U. VIVIT

NOTICE TO BORROWER: Borrower hereby waives all right of homestead exemption in such property records pertaining to the loan secured by this note at the time notice is given to the lender. Any notice to the Borrower provided for in the note or this Mortgage shall be deemed given when it is deposited in the United States Mail by the lender at the address of the Borrower as it appears in the note.

(11) **General Provisions:** (a) This Mortgage applies to, runs to the benefit of, and binds, all parties hereto, their heirs, legatees, devisees, administrators, executors, assignors and assigns. (b) The term "Lender" shall mean the owner and holder (including a pledgee) of any note secured hereby, whether or not named as Lender herein. (c) Wherever the context so requires, the masculine gender includes the feminine and neuter. (d) Captions and headings used herein are for convenience only and are not a part of this Mortgage and shall not be used in construing it.

(12) **Adjustable Rate Mortgage Provisions:** The Note which this Mortgage secures is an adjustable mortgage loan on which the interest rate may be adjusted from time to time in accordance with a monthly increase or decrease in an index, all as provided in said Note from time to time the monthly payment to be made by the Borrower shall be sufficient to pay all interest due in which case unpaid interest will be added to principal in no case shall the unpaid interest added to the principal exceed 150% of the original principal indebtedness.

(13) **Waiver of Homestead:** Borrower hereby waives all right of homestead exemption in such property records pertaining to the loan secured by this Mortgage, respectively of the maturity date applied in the note or notes, immediately due and payable.

(14) **Misrepresentation or Nondisclosure:** Borrower has made certain written representations and disclosures in order to induce Lender to make the loan evidenced by the note or notes which this Mortgage secures, and in the event that Borrower has made any representation or disclosure which is untrue or incomplete, or failed to disclose any material fact, Lender, at its option and without notice, shall have the right to declare the indebtedness secured by this Mortgage, respectively of the maturity date applied in the note or notes, immediately due and payable.

(15) **Offset:** No indebtedness secured by this Mortgage shall be offset or compensated by any claim, cause of action, counterclaim or cross claim, whether liquidated or unliquidated, which Borrower now or hereafter may have or claim to have in respect to all or part of the indebtedness secured hereby, and further which Borrower now or hereafter may have or claim to have in respect to all or part of the indebtedness secured hereby, and further waives the benefit of any applicable law, regulation or procedure which provides or substantially provides that, where cross demands for money are asserted between persons, at any point in time when neither demand was barred by the applicable statute of limitations, and an action was therefor commenced by one such person, the other person may assert in his answer the defense of payment in that the two money claims are offset against each other, notwithstanding that an independent action asserting his claim would at the time of filing his answer be barred by the applicable statute of limitations.

(16) **The Governing Law: Sovereignty:** The loan secured by this Mortgage is made pursuant to, and shall be construed and governed by, the laws of the United States and the rules and regulations promulgated thereunder, including the federal laws, rules and regulations for Federal Savings and Loan Associations. If any paragraph, clause or provision of the note or this Mortgage or the remaining paragraphs, clauses and provisions of this Mortgage or the note or other notes secured by this Mortgage are determined by a court of competent jurisdiction to be void, invalid or unenforceable, such decision shall affect only those paragraphs, clauses or provisions so determined and shall not affect the remaining paragraphs, clauses and provisions of this Mortgage or the note or other notes secured by this Mortgage.

(17) **Inspection and Business Records:** Lender at any time during the continuation of this Mortgage may enter and inspect such property at any reasonable time. Borrower agrees that in the event that such property is now or hereafter used for commercial or residential purposes, that when requested by Lender, Borrower will promptly deliver to Lender such certified financial statements and profit and loss statements of such type and at such intervals as may be required by Lender which will be in form and content prepared according to the generally accepted accounting principles and practices, which statements shall cover the financial operations relating to such property, and Borrower further agrees, when requested by Lender, to promptly deliver in writing such further additional information as may be requested by Lender relating to any of such financial statements.

(18) **Future Advances:** Upon request of Borrower, Lender at Lender's option prior to release of this Mortgage, may make Future Advances to Borrower. Such Future Advances, with interest thereon, shall be secured by the principal amount of the indebtedness secured by this Mortgage, not including sums advanced in accordance herewith to protect the security of this Mortgage, except the original amount of the Note