

# UNOFFICIAL COPY

The captions and headings of the paragraphs of this Mortgage are for convenience and reference only; they in no way define, limit or construe the scope or intent hereof. In this Mortgage, whenever the context so requires, the neuter shall include the masculine and feminine and the singular shall include the plural, where appropriate.

11. Notices. Except for any notice required under applicable law to be given in another manner: (a) any notice to Borrower provided for in this Mortgage shall be given by hand delivering it to, or by mailing such notice by mail addressed to Borrower at the Property Address or at such other address as Borrower may designate by written notice to Lender and (b) any notice to Lender shall be given by mail to Lender, c/o the Retail Banking Department at 9101 Greenwood Avenue, Niles, Illinois 60648, or to such other address as Lender may designate by written notice to Borrower. Any notice provided for in this Mortgage shall be deemed to have been given on the date hand delivery is actually made or the date notice is deposited into the U.S. mail.

12. Governing Law; Severability. This Mortgage shall be governed by the laws of the State of Illinois, which laws shall also govern and control the construction, enforceability and interpretation of this Mortgage. The foregoing sentence shall not limit the applicability of federal law to this Mortgage. Every provision hereof is intended to be severable. If any clause, phrase, provision or portion of this Mortgage or the application thereof is determined by a court of competent jurisdiction to be invalid or unenforceable under applicable law, the remaining clauses, phrases, provisions and portion shall be valid and enforceable to the fullest extent permitted by law.

13. Borrower's Copy. Borrower shall be furnished a conformed copy of the Note and of this Mortgage at the time of execution or after recordation hereof.

14. Remedies Cumulative. Lender may exercise all of the rights and remedies provided in this Mortgage and in the Credit Documents, or which may be available to Lender by law, and all such rights and remedies shall be cumulative and concurrent, and may be pursued singly, successively or together, at Lender's sole discretion, and may be exercised as often as occasion therefor shall occur.

15. Events of Default. An event of Default will occur hereunder upon the expiration of the applicable grace period, if any, after Lender gives Borrower written notice of the breach or Borrower's promises under the Note, Security Agreement or any of the Credit Documents and upon Borrower's failure to cure such breach and to provide Lender with evidence reasonably satisfactory to it of such cure. Failure to cure such breach within the specified grace period, if any, will result in acceleration of the sums secured by this Mortgage and the potential foreclosure of this Mortgage. Borrower agrees that Lender shall receive any and all proceeds from such sale and said proceeds will be paid as follows: FIRST, the cost and expenses associated with reasonable attorney's fees, if such attorneys be employed; SECOND, to the Lender upon the usual vouchers therefor, all moneys, including interest thereon, advanced and paid under and in pursuance of the terms and provisions of this Mortgage; THIRD, the amount unpaid on the Note secured hereby together with the interest accrued thereon; FOURTH, the amount due on junior encumbrances, and the balance, if any shall be paid to Borrower or its legal representative.

The Lender hereby lets said premises to the Borrower until a sale be had under the foregoing provisions thereof, or until a default or defaults in any of the terms, covenants and conditions of this instrument or of the Note secured hereby, upon the following terms and conditions thereof, to wit: Borrower and every and all person claiming or possessing such premises, or any part thereof, by, through or under it, shall pay rent therefor during said term at the rate of one percent per month, payable monthly upon demand, and shall surrender immediate peaceable possession of said premises, and any and every part thereof, sold under said provisions, to the purchaser thereof, under such sale, without notice or demand therefor and shall and will at once, without notice, surrender up possession of said premises and every part thereof in event Lender shall take charge and enter herebefore provided.

If sale be advertised but discontinued prior to sale, Borrower shall pay the cost of publication, title work and the sum of One Hundred Dollars (\$100.00) to Lender, together with a reasonable attorney's fee, if one be employed, as part of the costs incurred.

16. Transfer of Property. If Borrower, or any beneficiary of the Trust, sell, conveys, assigns or transfer, or promises or contract to sell, convey, assign or transfer, all or any part of the Property or any interest therein, or all or any part of the Beneficial Interest, if any, or amends or terminates any ground leases affecting the Property or title to the Property or the Beneficial Interest, if any, or any direct or indirect interest therein, is otherwise sold or transferred, voluntarily or involuntarily, including without limitation sale or transfer in any proceeding for foreclosure or judicial sale of the Property or the Beneficial Interest, if any, in each case without Lender's prior written consent, Lender shall be entitled to immediately accelerate the amounts due under the Note and declare all indebtedness secured by this Mortgage to be immediately due and payable. Failure to pay such indebtedness within thirty (30) days after notice to Borrower of such acceleration shall constitute an Event of Default.

17. Acceleration; Remedies. Upon the existence of an Event of Default, Lender may, at its sole option, terminate the line, declare all of the sums secured by this Mortgage to be immediately due and payable without further demand, and invoke any remedies permitted by applicable law. Lender shall be entitled to collect all reasonable costs and expenses incurred in pursuing the remedies provided in this Paragraph 17, including, but not limited to, reasonable attorneys' fees and costs of documentary evidence, abstracts and title reports.

As additional specific protection notwithstanding any other term of this Mortgage, Lender, without declaring or asserting an Event of Default or invoking any of its remedies pertaining to Events of Default, may, immediately and without notice, terminate the line upon occurrence of any event as outlined in Paragraphs 15 or 16 of this Mortgage. Lender has the right to accelerate payment according to the provisions as outlined in the Note.

18. Assignment of Rents. As additional security hereunder, Borrower hereby assigns to Lender the rents of the Property, provided that prior to acceleration under Paragraph 17 hereof or the occurrence of an Event of Default hereunder or abandonment of the Property, Borrower shall have the right to collect and retain such rents as they become due and payable.

Upon acceleration under Paragraph 17 hereof, or abandonment, Lender, at any time without notice, in person, by agent or by judicially appointed receiver, and without regard to the adequacy of any security for the indebtedness secured by this Mortgage, shall be entitled to enter upon, take possession of, and manage the Property, including those past due. All rents collected by Lender or the receiver shall be applied first to payment of the costs of operation and management of the Property and collection of rents, and then to the sums secured by this Mortgage. Lender and the receiver shall be liable to account only for those rents actually received. The entering upon and taking possession of the Property and the collection and application of the rents shall not cure or waive any Event of Default or notice of default hereunder or invalidate any act done pursuant to such notice.

19. Release. Upon payment and discharge of all sums secured by this Mortgage and termination of the Account, this Mortgage shall become null and void and Lender shall release this Mortgage without charge to Borrower.

20. Incorporation of Terms. All of the terms, conditions and provisions of the Note are by this reference incorporated herein as if set forth in full. Any event of Default under the Note shall constitute an Event of Default hereunder, without further notice to Borrower.

21. Waiver of Statutory Rights. Borrower shall not and will not apply for or avail itself of any homestead, appraisal, valuation, redemption, stay, extension, or exemption laws, or any so-called "moratorium laws," now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but hereby waives the benefit of such laws.

22. Future Advances. Upon request of Borrower, Lender, at Lender's option prior to release of this mortgage, may increase the line of credit secured hereby and make advances to the full amount thereof (herein "Future Advances"). Such Future Advances with interest thereon, shall be secured by this Mortgage. At no time shall the principal amount of the indebtedness secured hereby, not including sums advanced in accordance herewith to protect the security of this Mortgage, exceed the original principal amount of the Note.

23. Priority of Advances. All advances under the line of credit established by the Note shall have the same priority as if made at the time of execution of this Mortgage.

24. Taxes. In the event of the passage after the date of this Mortgage of any law, changing in any way the laws now in force for the taxation of mortgages, or debts secured thereby, or the manner of operation of such taxes, so as to affect the interest of Lender, then and in such event Borrower shall pay the full amount of such taxes.

25. Time of Essence. Time is of the essence to this Mortgage and all provisions relating thereto are to be strictly construed.

26. Trustee Exculpation. If this Mortgage is executed by a trust, \_\_\_\_\_, Trustee, executes this Mortgage as Trustee as aforesaid, in the exercise of the power and authority conferred upon and vested in it as such trustee, and it is expressly understood and agreed by the mortgagee herein and by every person now or hereafter claiming any right or security hereunder that nothing contained herein or in the Note secured by this Mortgage shall be construed as creating any liability on the Trustee personally to pay said Note or any interest that may accrue thereon, or any indebtedness accruing hereunder or to perform any covenants, either express or implied herein contained, all such liability, if any, being expressly waived, and that any recovery on this Mortgage and the Note secured hereby shall be solely against and out of the Property hereby conveyed by enforcement of the provisions hereof and of said Note, but this waiver shall in no way affect the personal liability of any co-maker, co-signer, endorser or guarantor of said Note.

4. Hazard Insurance. Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage", and such other hazards as Lender may require and 100% of the insurable value periods as Lender may require; provided, that Lender shall not require that the amount of such coverage exceed 100% of the insurable value of the Property.

The insurance carrier providing the insurance shall be chosen by Borrower subject to approval by Lender; provided, that such approval shall not be unreasonably withheld. All insurance policies and renewals thereof shall be in a form acceptable to Lender and shall include a standard mortgage clause in favor of and in a form acceptable to Lender. Lender shall have the right to hold the policies and renewals thereof, subject to the terms of any mortgage, deed of trust or other security agreement with a lien which has or appears to have any priority over this Mortgage and unless Borrower and Lender otherwise agree in writing, insurance proceeds shall be applied to have any priority over this Mortgage and the security of this Mortgage is not thereby impaired. If such restoration or repair is not economically feasible or if the security of this Mortgage would be impaired, the insurance proceeds shall be applied to the sums secured by this Mortgage, with excess, if any, paid to Borrower. Such applications shall not cure or waive any default or notice of default under this Mortgage or invalidate any act done pursuant to such notice.

If the Property is abandoned by Borrower, or if Borrower fails to respond to Lender in writing within thirty (30) calendar days from the date notice is mailed by Lender to Borrower that the insurance carrier offers to settle a claim for insurance benefits, Lender is irrevocably authorized to settle the claim and to collect and apply the insurance proceeds at Lender's sole option either to restoration or repair of the Property or to the sums secured by this Mortgage.

[Under Paragraph 17 hereof the Property is acquired by Lender, all right, title and interest of Borrower in and to any insurance policies and in and to the proceeds thereof resulting from damage to the Property prior to such sale or acquisition shall become the property of Lender to the extent of the sums secured by this Mortgage immediately prior to such sale or acquisition.

Unless Lender and Borrower otherwise agree in writing, any such application of proceeds to principal shall not extend or postpone the due date of the installment due under the Note hereof or change the amount of such installments.

5. Preservation and Maintenance of Property. Leaseholds, Condominiums, Planned Unit Developments, Borrower shall use, improve and maintain the Property in compliance with applicable laws, statutes, ordinances, orders, requirements, decrees or regulations, shall keep the Property in good condition and repair, including the repair or restoration of any impairment or deterioration of the Property which may be damaged or destroyed, shall not commit or permit waste or permit impairment or deterioration of the Property, and shall fully and promptly comply with the provisions of any lease if this Mortgage is on a leasehold. If this Mortgage is on a unit in a condominium or a planned unit development, Borrower shall promptly perform all of Borrower's obligations under the declaration or covenants creating or governing the condominium or planned unit development, the by-laws and regulations of the condominium or planned unit development, and constitute documents, all as may be amended from time to time. If a condominium or planned unit development rider is executed by Borrower and recorded together with this Mortgage, the covenants and agreements of such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Mortgage as if the rider were a part hereof.

6. Protection of Lender's Security. If Borrower fails to perform the covenants and agreements contained in this Mortgage or ABL and Security Agreement, or if any action or proceeding is commenced which affects Lender's interest in the Property or the rights or powers of Lender hereunder, including but not limited to eminent domain, insolvency, code enforcement, or arrangements involving a bankruptcy or decedent, the Lender without demand upon Borrower but upon notice to Borrower pursuant to Paragraph 11 hereof, without releasing Borrower from any obligation in this Mortgage, or other appearances, defend the action or proceeding, disburse such amounts, including reasonable attorney's fees, and take such action as Lender deems necessary to protect the security of this Mortgage. If Lender has required mortgage insurance as a condition of making the loan secured by this Mortgage, Borrower shall pay the premiums required to maintain such insurance in effect, until such time as the requirement for such insurance terminates in accordance with Borrower's and Lender's written agreement or applicable law.

Any amounts disbursed by Lender pursuant to this Paragraph 6, with interest thereon at the rate from time to time in effect under the Note, shall become additional indebtedness of Borrower secured by this Mortgage. Unless Borrower and Lender agree in writing, no other terms of payment, such amounts shall be payable upon notice from Lender to Borrower requesting payment thereof and if such are not paid within the time period set forth in such notice, such amounts may be charged by Lender as a draw on the Note. Nothing contained in this Paragraph 6 shall require Lender to incur any expense or take any action hereunder and any act in taken shall not release Borrower from any obligation in this Mortgage.

7. Inspection. Lender may make or cause to be made reasonable entries upon and inspections of the Property provided that, except in an emergency, Lender shall give Borrower notice prior to any such inspection specifying the reasonable cause therefor related to Lender's interest in the Property.

8. Condemnation. The proceeds of any award or claim for damages, or consequential, in connection with any condemnation or other taking of the Property, or part thereof, for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender, subject to the terms of any mortgage, deed of trust or other security agreement with a lien which has priority over this Mortgage. Borrower agrees to execute such further documents as may be required by the condemnation authority to effectuate this paragraph. In the event of a total taking of the Property, the proceeds shall be applied to sums secured by this Mortgage, with the excess, if any, paid to Borrower. In the event of a partial taking of the Property, unless Borrower and Lender otherwise agree in writing, there shall be applied to the sums secured by this Mortgage such proportion of the proceeds as is equal to that proportion which the amount of the sums secured by this Mortgage immediately prior to the date of taking bears to the fair market value of the Property immediately prior to the date of taking, with the balance of the proceeds paid to Borrower.

If the property is abandoned by Borrower, or if, after notice by Lender to Borrower that the condemnation offers to make an award or settle a claim for damages, Borrower fails to respond to Lender within thirty (30) days after the date such notice is mailed, Lender is authorized to collect and apply the proceeds, at Lender's option, either to restoration or repair of the Property or to the sums secured by this Mortgage. Unless Lender and Borrower otherwise agree in writing, any such application of proceeds to principal shall not extend or postpone the due date of the installment due under the Note or change the amount of such installments.

9. Borrower Not Released. Forfeiture by Lender of the time for payment, acceptance by Lender of payments other than according to the terms of the Note, modification in payment terms of the sums secured by this Mortgage granted by Lender to any successor in interest of Borrower, or the waiver or failure to exercise any right granted herein or under the Credit Documents shall not operate to release, in any manner, the liability of the original Borrower, Borrower's successors in interest, or any guarantor or surety hereof. Lender shall not be required to commence proceedings against such successor or refuse to extend time for payment or otherwise modify payment terms of the sums secured by this Mortgage by reason of any demand made by the original Borrower and Borrower's successors in interest. Lender shall not be deemed, by any act of omission or commission, to have waived any of these rights or remedies hereunder unless such waiver is in writing and signed by Lender. Any such waiver shall apply only to the extent specifically set forth in the writing. A waiver as to one event shall not be construed as continuing or a waiver as to any other event. The procurement of insurance or the payment of taxes, other liens or charges by Lender shall not be a waiver of Lender's right as otherwise provided in this Mortgage in the event of Borrower's default under this Mortgage or the other Credit Documents.

10. Successors and Assigns Bound; Joint and Several Liability; Co-Signers; Captions. As used herein, the terms "Borrower" and "Lender" shall include their respective heirs, devisees, executors, administrators, trustees, assignors, assignees, successors, assigns and subsequent holders of the Note. All of the terms, covenants, conditions and agreements set forth herein shall be binding upon and inure to the benefit of such parties, except that no rights shall inure to any successor of Borrower unless consented to by Lender as herein provided. Borrower hereby acknowledges that Lender may freely assign or transfer all or any part of Lender's rights hereunder. If one or more person or entity signs this Mortgage, each of them is jointly and severally obligated hereunder. Any Borrower who co-signs this Mortgage, but does not execute the Note, (a) is co-signing this Mortgage only to encumber that Borrower's interest in the Property under the lien and terms of this Mortgage and to release heretofore held rights, if any, (b) is not personally liable on the Note or under this Mortgage, and (c) agrees that Lender and any other Borrower hereunder may agree to extend, modify, forebear, or make any other accommodations with regard to the terms of this Mortgage or the Note, without the Borrower's consent, and without the Borrower's knowledge, and without the Borrower's interest in the Property.

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THIS MORTGAGE, (herein "Mortgage") TO SECURE A HOME EQUITY CREDIT LINE AGREEMENT and PROMISSORY NOTE is made this First day of August, 19 89 by and between J. Rene Dadiyas and Rosa A. Dadiyas, His wife, as Joint Tenants

(herein "Borrower") and FIRST OF AMERICA BANK-GOLF MILL, an Illinois Banking association, whose address is 9101 Greenwood Avenue, Niles, Illinois 60648 (herein "Lender").

WHEREAS, Borrower is indebted to Lender under a Home Equity Credit Line Agreement, Promissory Note and Disclosure Statement dated 8-1-89 (herein "Note") with a credit limit of Eighty thousand and no Dollars (\$80,000.00) upon which Borrower may draw and Lender is obligated to make advances from time to time to the full amount thereof. Repayments of sums advanced from time to time will replenish the credit limit pro tanto so that the total amount that may be lent under the Note may exceed the credit limit thereof but not at any one time. The Note provides for monthly installments of interest, at the rate set forth in the Note with the principal balance of the indebtedness, if not sooner paid or required to be paid, due and payable five (5) years from the date hereof. It is agreed that a zero balance in the Home Equity Credit Line account will not terminate this Mortgage so long as the Note has not been terminated or cancelled.

Borrower, in consideration of the indebtedness herein recited, does hereby mortgage, grant, warrant and convey (unless Borrower is a Trust, in which event Borrower does hereby mortgage, grant, quitclaim and convey) unto Lender and its successors and assigns, the following described property located in the Village of Niles County of COOK State of Illinois:

Lot 6 in Frank Di Maria's subdivision, a subdivision in the East 1/2 of the South East 1/4 of the North West 1/4 of section 23, Township 41 North, Range 12 East of the Third principal meridian, in Cook County, Illinois.

Common address: 8430 Peter Terrace, Niles, IL 60648  
PIN # 09-23-121-014-0000

which has the address of 8430 Peter Terrace, Niles, IL (herein "Property Address").

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances, rents, royalties, mineral, oil and gas rights and profits, water, water rights, and water stock, insurance and condemnation proceeds, and all fixtures now or hereafter attached to the property, all of which, including replacements and additions thereto, shall be deemed to be and remain a part of the property (or the leasehold estate if this Mortgage is on a leasehold) are hereinafter referred to as the "Property".

TO HAVE AND TO HOLD the Property unto Lender, its successors and assigns, forever, for the uses and purposes set forth herein. Borrower covenants that Borrower is the lawful owner of the estate in land hereby conveyed and has the right to grant, convey and mortgage the Property, and that the Property is unencumbered, except for that certain Mortgage or Deed of Trust in favor of Talman Home Fed. Svgs and Loan dated November 27, 1978 and recorded/registered December 13, 1978 as Document No. 24761626 in the Office of the Recorder of Deeds/Registrar of Titles, Cook County, Illinois. Borrower, (unless Borrower is a Trust) covenants that Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to encumbrances of record. Borrower covenants that Borrower will neither take nor permit any action to partition or subdivide the Property or otherwise change the legal description of the Property or any part thereof, or change in any way the condition of title of the Property or any part thereof.

THIS MORTGAGE IS GIVEN TO SECURE (1) the repayment of the indebtedness evidenced by Borrower's Note of even date all amounts owed from time to time, including interest and advances and expenses under the following documents: (a) The Note signed by J. Rene Dadiyas and Rosa A. Dadiyas, His wife on 8-1, 1989, in the amount of \$ 80,000.00, including advances made by Bank from time to time; (b) this Mortgage itself, and (c) if title to the Property is held by a Trust, by the Collateral Assignment of Beneficial Interest (herein "ABI") and Security Agreement to Secure Note of even date herewith and (d) any extensions, renewals, or modifications of any of the above.

Borrower acknowledges that the Note calls for a variable interest rate, and that the Lender may, prior to the expiration of the term of the Note, cancel future advances thereunder and/or require repayment of the outstanding balance as outlined under the Note. COVENANTS, Borrower and Lender covenant and agree as follows:

1. Payment of Principal and Interest. Borrower shall promptly pay when due the principal and interest on the indebtedness evidenced by the Note, together with any late charges or other charges imposed under the Note and principal and interest on any Future Advanced secured by this Mortgage.

2. Funds for Taxes and Insurance. Subject to applicable law or to a waiver by Lender, Borrower shall pay to the Lender on the day monthly installments of interest is payable under the Note, until the Note is paid in full, a sum (herein "Funds") equal to one-twelfth of the yearly taxes and assessments which may attain priority over this Mortgage, and ground rents on the Property, if any, plus one-twelfth of yearly premium installments for hazard insurance, plus one-twelfth of yearly premium installments for mortgage insurance, if any, all as reasonably estimated initially and from time to time by Lender on the basis of assessments and bills and reasonable estimates thereof. The Funds shall be held in an institution the deposits or accounts of which are insured or guaranteed by a Federal or state agency (including Lender if Lender is such an institution). Lender shall apply the Funds to pay said taxes, assessments, insurance premiums and ground rents. Lender may not charge for so holding and applying the Funds, analyzing said account, or verifying and compiling said assessments and bills, unless Lender pays Borrower interest on the Funds and applicable law permits Lender to make such a charge. Borrower and Lender may agree in writing at the time of execution of this Mortgage that interest on the Funds shall be paid to Borrower, and unless such agreement is made or applicable law requires such interest to be paid, Lender shall not be required to pay Borrower any interest or earnings on the Funds.

If the amount of the Funds held by Lender, together with the future monthly installments of Funds payable prior to the due dates of taxes, assessments, insurance premiums and ground rents, shall exceed the amount required to pay said taxes, assessments, insurance premiums and ground rents as they fall due, such excess shall be, at Lender's option, either promptly repaid to Borrower or credited to Borrower on monthly installments of Funds. If the amount of the Funds held by Lender shall not be sufficient to pay taxes, assessments, insurance premiums and ground rents as they fall due, borrower shall pay to Lender any amount necessary to make up the deficiency within thirty (30) days from the date notice is mailed by Lender to Borrower requesting payment thereof.

Upon payment in full of all sums secured by this Mortgage, Lender shall promptly refund to Borrower any Funds held by Lender. If under Paragraphs 16 and 17 hereof the Property is sold or the Property is otherwise acquired by Lender, Lender shall apply, no later than immediately prior to the sale of the Property or its acquisition by Lender, any Funds held by Lender at the time of application as a credit against the sums secured by this Mortgage.

3. Prior Encumbrance; Charges; Liens. Borrower shall fully and timely perform all of Borrower's obligations under any mortgage, deed of trust or other security agreement with a lien which has or appears to have any priority over this Mortgage, including Borrower's covenants to make any payments when due. A default under any prior mortgage or deed of trust or other security agreement with a lien which has or appears to have any priority over this Mortgage may at the option of Lender be declared and deemed to be a default under this Mortgage. Borrower shall pay all taxes, assessments and other charges, fines and impositions attributable to the Property which may attain a priority over this Mortgage, and leasehold payments or ground rents, if any, in the manner provided under Paragraph 2 hereof or, if not paid in such manner, by Borrower making payment, when due, directly to the payee thereof. Borrower shall promptly furnish to Lender receipts evidencing such payments. Borrower shall promptly discharge any lien which may attain priority over this Mortgage (other than any prior first mortgage or deed of trust); provided, that Borrower shall not be required to discharge any such lien so long as Borrower shall agree in writing to the payment of the obligation secured by such lien in a manner acceptable to Lender, or shall in good faith contest such lien by, or defend enforcement of such lien in, legal proceedings which operate to prevent the enforcement of the lien or forfeiture of the Property or any part thereof.

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