

90549969

MORTGAGE TO SECURE A REVOLVING CREDIT LOAN

NOTICE: THIS MORTGAGE MAY SECURE BORROWINGS MADE SUBSEQUENT TO A TRANSFER OF THE PROPERTY

This MORTGAGE TO SECURE A REVOLVING CREDIT LOAN (herein "Mortgage") is made by and among Michael J. Berry and Lauren J. Berry, his wife as joint tenants.

(herein "Borrower") and BANK OF BUFFALO GROVE, 10 EAST DUNDEE ROAD, BUFFALO GROVE, ILLINOIS 60089 (herein "Bank").

Borrower, in consideration of the indebtedness herein recited, grants, bargains, sells and conveys, warrants and mortgages (unless Borrower is a Trust, in which event Borrower conveys, mortgages and quitclaims) unto Bank and Bank's successors and assigns, the following Described

property located in the Village of Arlington Heights State of Illinois: County of Cook

Lot 4 in Terramere of Arlington Heights Unit 2, being a Subdivision of part of the North 1/2 of Section 6, Township 42 North, Range 11, East of the Third Principal Meridian, in Cook County, Illinois.

DEPT-01 RECORDING 122.25
T#5555 TRAN 9462 11/09/90 15:07:00
#7881 + E *-90-549969
COOK COUNTY RECORDER

03-06-217-604

commonly known as: 4117 N. Highland Arlington Heights, IL 60004 Illinois (herein "Property Address");

TO HAVE AND TO HOLD such property unto Bank and Bank's successors and assigns, forever, together with all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances after acquired title or reversion in and to the beds of ways, streets, avenues and alleys adjoining the Property, and rents (subject however to the rights and authorities given herein to Bank to collect and apply such 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 covered by this Mortgage; and all of the foregoing, together with said property are hereinafter referred to as the "Property"; as to any property which does not constitute a fixture (as such term is defined in the Uniform Commercial Code), this Mortgage is hereby deemed to be, as well, a Security Agreement under the Uniform Commercial Code for the purpose of creating a security interest in such property, which Borrower hereby grants to Bank as Secured Party (as such term is defined in the said Code);

To Secure to Bank on condition of the repayment of the indebtedness evidenced by an Agreement and disclosure Statement ("Agreement") of even date herewith and by Borrower's Variable Interest Rate Promissory Note ("Note") of even date herewith, in the principal sum of

EA 109971

EQUITY TITLE COMPANY
100 NORTH WASHINGTON STREET
CHICAGO, ILLINOIS 60602

90549969

2200

UNOFFICIAL COPY

AJH 9/22/89

U.S. \$ 50,000.00, or so much hereof as may be advanced and outstanding, with interest thereon, providing for monthly installments of interest, with the principal balance of the indebtedness, if not sooner paid or required to be paid, due and payable TEN (10) years from the date thereof; the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Mortgage; and the performance of the covenants and agreements of Borrower contained herein and in the Agreement and the Note. The Agreement, the Note and this Mortgage are collectively referred to as the "Credit Documents". The Note evidences a "revolving credit" as defined in Illinois Statutes Chapter 17, Paragraph 6405 and as otherwise amended. The lien of this Mortgage secures payment of any existing indebtedness and future advances made pursuant to the Note, to the same extent as if such future advances were made on the date of the execution of this Mortgage, without regard to whether or not there is any advance made at the time this Mortgage is executed and without regard as to whether or not there is any indebtedness outstanding at the time any advance is made.

Notwithstanding anything to the contrary herein, the Property shall include all of Borrower's right, title, and interest in and to the real property described above, whether such right, title, and interest is acquired before or after execution of this Mortgage.

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 encumbrances of record. 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.

Borrower acknowledges that the Note calls for a variable interest rate, and that the Bank may, prior to the expiration of the term of Note, cancel future advances thereunder and/or require repayment of the outstanding balance under the Note.

COVENANTS. Borrower and Bank covenant and agree as follows:

1. **PAYMENT OF PRINCIPAL AND INTEREST.** Borrower shall promptly pay when due, in accordance with the terms of the Note, the principal and interest on the indebtedness evidenced by the Note, together with any late charges and other charges imposed under the Note.

2. **APPLICATION OF PAYMENTS.** Unless applicable law requires otherwise, all payments received by Bank under the Note and this Mortgage shall be applied by Bank first in payment of amounts payable to Bank by Borrower under paragraphs 6 and 26 of this Mortgage, then to interest payable on the Note, then to other charges payable under the Agreement, and then to the principal of the Note.

3. **PRIOR MORTGAGES AND DEEDS OF TRUST; 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. Borrower shall pay or cause to be paid, at least ten (10) days before delinquency, all taxes, assessments and other charges, fines and impositions attributable to the Property and all

UNOFFICIAL COPY

AJH 9/22/89

encumbrances, charges, loans, and liens (other than any prior first mortgage or deed to trust) on the Property which may attain any priority over this Mortgage, and leasehold payments or ground rents, if any. Borrower shall deliver to Bank upon its request, receipts evidencing such payment.

4. **HAZARD INSURANCE.** Borrower shall, at its cost, 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 (collectively referred to as "Hazards") as Bank may require. Borrower shall maintain Hazard insurance for the entire term of the Note or such other periods as Bank may require and in an amount equal to the lesser of (a) the maximum insurable value of the Property or (b) the amount of the line of credit secured by this Mortgage plus the outstanding amount of any obligation secured in priority over this Mortgage, but in no event shall such amounts be less than the amount necessary to satisfy the coinsurance requirement contained in the insurance policy.

The insurance carrier providing the insurance shall be chosen by Borrower subject to approval by Bank provided, that such approval shall not be unreasonably withheld. All insurance policies and renewals hereof shall be in a form acceptable to Bank and shall include a standard mortgage clause in favor of and in a form acceptable to Bank. Bank 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. If Borrower makes the premium payment directly, Borrower shall promptly furnish to Bank all renewal notices and, if request by Bank, all receipts of said premiums. If policies and renewals are held by any other person, Borrower shall supply copies of such to Bank within ten (10) calendar days after issuance.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Bank. Bank may make proof of loss if not made promptly by Borrower.

Subject to the right and 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, the amounts collected by Borrower or Bank under any Hazard insurance policy may, at Bank's sole discretion, either be applied to the indebtedness secured by this Mortgage (after payment of all reasonable cost, expenses and attorneys' fees necessarily paid or incurred by Bank and Borrower in this connection) and in such order as Bank may determine or be released to Borrower for use in repairing or reconstructing the Property, and Bank is hereby irrevocably authorized to do any of the above. Such application or release 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 Bank in writing within thirty (30) calendar days from the date notice is mailed by Bank to Borrower that the insurance carrier offers to settle a claim for insurance benefits, Bank is irrevocably authorized to settle the claim and to collect and apply the insurance proceeds at Bank's sole option either to restoration or repair of the Property or to the sums secured by this Mortgage.

If the Property is acquired by Bank, 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 Bank to the extent of the sums secured by this Mortgage immediately prior to such sale or acquisition.

UNOFFICIAL COPY

AJH 9/22/89

5. PRESERVATION AND MAINTENANCE OF PROPERTY; LEASEHOLDS; CONDOMINIUMS; PLANNED UNIT DEVELOPMENTS. Borrowers 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 improvements on the Property which may be damaged or destroyed, shall not commit or permit waste or permit impairment of deterioration of the Property. 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 constituent 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 the 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 BANK'S SECURITY. If Borrower fails to perform the covenants and agreements contained in this Mortgage or in the Credit Documents, or if any action or proceeding is commenced which affects Bank's interest in the Property or the rights or powers of Bank, then Bank without demand upon Borrower but upon notice to Borrower pursuant to paragraph 11 hereof, may without releasing Borrower from any obligation in this Mortgage, make such appearances, defend the action or proceeding, disburse such sums, including reasonable attorneys' fees, and take such action as Bank deems necessary to protect the security of this Mortgage. If Bank 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 Bank's written agreement or applicable law.

Any amounts disbursed by Bank 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 Bank agree, in writing, to other terms of payment, such amounts shall be payable upon notice from Bank to Borrower requesting payment thereof. Nothing contained in this paragraph 6 shall require Bank to incur any expense or take any action hereunder and any action taken shall not release Borrower from any obligation in this Mortgage.

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

8. CONDEMNATION. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Bank 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. Bank is hereby irrevocably authorized to apply or release such moneys received or make settlement for such moneys in the same manner and with the same effect as provided in this Mortgage for disposition or settlement of proceeds of Hazard insurance. No settlement for condemnation

90555506

AJH 9/22/89

damages shall be made without Bank's prior written approval.

9. **BORROWER NOT RELEASED; FORBEARANCE BY BANK NOT A WAIVER.** Extension of the time for payment, acceptance by Bank of payments other than according to the terms of the Note, modification in payment terms of the sums secured by this Mortgage granted by Bank 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 thereof. Bank 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 or any demand made by the original Borrower and Borrower's successors in interest. Bank shall not be deemed, by any act of omission or commission, to have waived any of its rights or remedies hereunder unless such waiver is in writing and signed by Bank. 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 as a waiver as to any other event. The procurement of insurance or the payment of taxes, other liens or charges by Bank shall not be a waiver of Bank's right as otherwise provided in this Mortgage to accelerate the maturity of the indebtedness secured by 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.** The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors, heirs, legatees, devisees and assigns of Bank and Borrower, subject to the provisions of paragraph 16 hereof. All covenants and agreements of Borrower (or Borrower's successors, heirs, legatees, devisees and assigns) shall be joint and several. 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 homestead rights, if any, (b) is not personally liable on the Note or under this Mortgage, and (c) agrees that Bank and any other Borrower hereunder may agree to extend, modify, forbear, or make any other accommodations with regard to the terms of this Mortgage or the Note without that Borrower's consent and without releasing that Borrower or modifying this Mortgage as to that Borrower's interest in the Property. The captions and headings of the Paragraphs of this Mortgage are for convenience only and are not to be used to interpret or define the provisions hereof. In this Mortgage, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

11. **NOTICES.** Except for any notice required under applicable law to be given in another manner: (a) any notice to Borrower (or Borrower's successors, heirs, legatees, devisees and assigns) provided for in this Mortgage shall be given by hand delivering it to, or by mailing such notice by registered or certified mail addressed to, Borrower (or Borrower's successors, heirs, legatees, devisees and assigns) at the Property Address or at such other address as Borrower (or Borrower's successors, heirs, legatees, devisees and assigns) may designate by written notice to Bank as provided herein; and (b) any notice to Bank shall be given by registered or certified mail to Bank of BANK OF BUFFALO GROVE, 10 EAST DUNDEE ROAD, BUFFALO GROVE, ILLINOIS 60089 or to such other address as Bank may designate by written notice to Borrower (or to Borrower's successors, heirs, legatees, devisees, and assigns which have provided Bank with written notice of their existence and address) as provided herein.

90545969

UNOFFICIAL COPY

AJH 9/22/89

Any notice proved for in this Mortgage shall be deemed to have been given on the date had delivery is actually made or the date notice is deposited into the U.S. mail system as registered or certified mail addressed as provided in this paragraph 11.

12. GOVERNING LAW; SEVERABILITY. The Mortgage shall be governed by and interpreted in accordance with the laws of the State of Illinois. If any provision of this Mortgage shall be adjudged invalid, illegal, or unenforceable by any court, such provision shall be deemed stricken from this Mortgage and the balance of the Mortgage shall be construed as if such provision had never been included. As used herein, "costs", "expenses" and attorneys' fees" include all sums to the extent not prohibited by applicable law or limited herein.

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

15. EVENTS OF DEFAULT.

a. Notice and Grace Period. An Event of Default will occur hereunder upon the expiration of the applicable grace period, if any, after Bank gives written notice to Borrower of Borrower's breach or violation of Borrower's covenants under any of the Credit Documents and upon Borrower's failure to cure such breach or violation, and to provide Bank, during that grace period, if any, with evidence reasonably satisfactory to it of such cure. In each case, the grace period begins to run on the day after the notice is given, and expires at 11:59 p.m., Central time, on the last day of the period. If there is no grace period applicable to a particular breach or violation, the Event of Default will occur hereunder upon the giving of the above notice. Such notice shall be given to Borrower in accordance with paragraph 11 hereof and shall contain the following information: (1) the nature of Borrower's breach or violation; (2) the action, if any, required or permitted to cure such breach or violation; (3) the applicable grace period, if any, during which such breach or violation must be cured; and (4) whether failure to cure such breach or violation 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. The notice shall further inform Borrower of the right, if any, under applicable law, to reinstate his revolving line of credit under this Mortgage after acceleration.

b. Events of Default. Set forth below is a list of events which upon the lapse of the applicable grace period, if any, will constitute Events of Default. Applicable grace periods are set forth parenthetically after each event.) The events are: (1) Borrower fails to pay when due any amounts due under the Credit Documents; (thirty (30) day grace period); (2) Bank receives actual knowledge that Borrower omitted material information on Borrower's credit application (no grace period); (3) Borrower dies or changes his or her marital status and transfers Borrower's interest in the Property to someone who either (i) is not also a signatory of all the Credit Documents (no grace period); or (ii) is a signatory of all the Credit Documents if such transfer, in Bank's reasonable judgment, materially impairs the security

90545969

AJH 9/22/89

for the line of credit described in the Credit Documents (no grace period); (4) Borrower commits any action or inaction which adversely affects the Property; (5) Borrower files for bankruptcy, or bankruptcy proceedings are instituted against Borrower and not dismissed within sixty (60) calendar days, under any provision of any state or federal bankruptcy law in effect at the time of filing (no grace period); (6) Borrower makes an assignment for the benefit of his or her creditors, becomes insolvent or becomes unable to meet his or her obligations generally as they become due (no grace period); (7) Borrower further encumbers the Property, or suffers a lien, claim of lien or encumbrance against the Property (thirty (30) day grace period in which to remove the lien, claim of lien or encumbrance); (8) Borrower defaults or an action is filed alleging a default under any credit instrument or mortgage evidencing or securing an obligation of Borrower with priority in right of payment over the line of credit described in the Credit Documents or whose lien has or appears to have any priority over the lien hereof (no grace period), or any other creditor of Borrower attempts to (or actually does) seize or obtain a writ of attachment against the Property (no grace period).

c. Remedies (including freezing the line). In addition to acceleration of the indebtedness owing under this Note permitted in the event of sale or transfer of, or promise to sell or transfer, all or any part of the Property securing this Note, or any interest therein, or any interest in the Trust which holds title to the Property, if any, which events are specifically covered in paragraph 8 of this Note, Note Holder may, at its sole option, upon the occurrence of an Event of Default, freeze or terminate the line, and, require me to make immediate full repayment of the unpaid balance of the line together with accrued but unpaid interest and other charges. If I fail to make such payment upon demand Note Holder may institute foreclosure proceedings or pursue any other remedy or remedies given to Note Holder by law or under the Credit Documents. As additional specific protection, notwithstanding any other term of this Note, Note Holder, without declaring or asserting an Event of Default or invoking any of its remedies pertaining to Events of Default, may immediately and without notice, freeze the line, upon the occurrence of any event enumerated in sub-paragraph 7b or paragraph 8 of this Note. Freezing the line will not preclude Note Holder from subsequently exercising its call option pursuant to paragraph 6 of this Note, or exercising any right or remedy set forth herein or in any of the Credit Documents.

16. TRANSFER OF THE PROPERTY. If Borrower, or beneficiary of the Trust, if any, sells, conveys, assigns or transfers, or promises or contracts to sell, convey, assign or transfer, all or any part of the property or any interest therein, including all or any part of the beneficial interest in the Trust, if any, or amends or terminates any ground leases affecting the Property, or if title to the Property, 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 beneficial interest in the Trust, if any, in each case without Bank's prior written consent, Bank 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 as set forth in paragraph 17 of the Agreement. Failure to pay such indebtedness within ten (10) days after notice to Borrower of such acceleration shall constitute an Event of Default. Any use or attempted use by Borrower of the revolving line of credit evidenced by the Agreement and the Note after Borrower's sale, transfer, or promise to sell or transfer the Property or any direct or indirect interest therein, or amendment or termination of any ground leases

90545969

UNOFFICIAL COPY

AJH 9/22/89

affecting the Property; shall constitute a separate Event of Default.

17. IMPAIRMENT OF NOTE HOLDER'S RIGHTS

A. When Line may be Frozen or Credit Limit Reduced. Note Holder may temporarily freeze the line at any time, or reduce my credit limit, if: (1) the value of the dwelling that secures the plan declines significantly below the Property's appraised value for purposes of the plan; (2) the Note Holder reasonably believes that I will be unable to fulfill the repayment obligations under the plan because of a material change in my financial circumstances; (3) I am in default of any material obligation under this Note; (4) The Note Holder is precluded by government action from imposing the annual percentage rate provided for in the Note; (5) the priority of the Note Holder's interest is adversely affected by government action to the extent that the value of the security interest is less than 120 percent of the credit line (for example, through imposition of a tax lien); (6) the Note Holder is notified by its regulatory agency that continued advances constitute an unsafe and unsound practice; or (7) the maximum annual percentage rate is reached.

b. Notice. To freeze the line or reduce the credit line pursuant to this paragraph, Note Holder must deliver or mail (registered or certified mail) within three (3) business days after the action is taken to the Property's address a written notice addressed to me, specifying a date at least thirty (30) calendar days after the date of notice after which it will not honor any checks and thus not extend further credit. Upon receipt of such notice, I agree to immediately return to Note Holder all my unused checks, if the notice specifies that Note Holder is freezing my line, I am not obligated to repay my outstanding principal balance until the Due Date, provided, however, that Note Holder will still have the right, in accordance with and at the times specified in this Note, to give me a subsequent notice terminating my line entirely, thus advancing the date principal repayment is due.

18. ASSIGNMENT OF RENTS; APPOINTMENTS OF RECEIVER; LENDER IN POSSESSION. As additional security hereunder, Borrower hereby assigns to Bank the rents of the Property, provided that prior to 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 the occurrence of an Event of Default thereunder, or abandonment, Bank 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, and in its own name sue for or collect the rents of the Property, including those past due. All rents collected by Bank or the receiver shall be applied first to payment of the costs of operation and management of the Property and collection of rents, including, but not limited to, receiver's fees, premiums on receiver's bonds and reasonable attorney's fees, and then to the sums secured by this Mortgage. Bank 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 Bank shall release

93637505

UNOFFICIAL COPY

AJH 9/22/89

this Mortgage without charge to Borrower. Borrower shall pay all costs of recordation, if any.

20. **REQUEST FOR NOTICES.** Borrower requests that copies of any notice of default be addressed to Borrower and sent to the Property Address. Bank requests that copies of notices of default, sale and foreclosure from the holder of any lien which has priority over this Mortgage be sent to Bank's address, as set forth on page one of this Mortgage.

21. **INCORPORATION OF TERMS.** All of the terms, conditions and provisions of the Agreement and Note are by this reference incorporated herein as if set forth in full. Any Event of Default under the Note or the Agreement shall constitute an Event of Default hereunder, without further notice to Borrower.

22. **TIME OF ESSENCE.** Time is of the essence in this Mortgage, and the Note and Agreement.

23. **ACTUAL KNOWLEDGE.** For purposes of this Mortgage and each of the other Credit Documents, Bank will not be deemed to have received actual knowledge of information required to be conveyed to Bank in writing by Borrower until the date of actual receipt of such information at BANK OF BUFFALO GROVE, 10 EAST DUNDEE ROAD, BUFFALO GROVE, ILLINOIS 60089 (or such other address specified by Bank to Borrower). Such date shall be conclusively determined by return receipt in reference to the possession of Borrower. If such return receipt is not available, such date shall be conclusively determined by reference to the "Received" date stamped on such written notice by Bank of Bank's agent. With regard to other events or information not provided by Borrower under the Credit Documents, Bank will be deemed to have actual knowledge of such event or information as of the date Bank receives a written notice of such event or information from a source Bank reasonably believes to be reliable, including but not limited to, a court or other governmental agency, institutional lender, or title company. The actual date of receipt shall be determined by reference to the "Received" date stamped on such written notice by Bank of Bank's agent.

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 Bank, then and in such event Borrower shall pay the full amount of such taxes.

25. **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. Borrower, for itself and all who may claim through or under it, waives any and all right to have the property and estates comprising the Property marshalled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Property sold as an entirety. Borrower hereby waives any and all rights of redemption from sale under any order or decree of foreclosure pursuant to rights herein granted, on behalf of the Mortgagor, the trust estate, and all persons beneficially interested therein, and each and every person acquiring any interest in or title to the Property described herein subsequent to the date of this Mortgage, and on behalf of all other persons to the extent permitted by Illinois law.

26. **EXPENSE OF LITIGATION.** In any suit to foreclose the lien of this Mortgage or enforce any other remedy of the

90545969

UNOFFICIAL COPY

AJH 9/22/89

Bank under this Mortgage, the Agreement, or the Note there shall be allowed and included, as additional indebtedness in the judgment or decree, all expenditure and expenses which may be paid or incurred by or on behalf of Bank for Attorneys' fees, appraisers' fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, survey costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all abstracts of title, title searches and examinations, title insurance policies, Torrens certificates, and similar data and assurances with respect to title as Bank may deem reasonably necessary either to prosecute such suit or to evidence bidders at any sale which may be had pursuant to such decree the true condition of the title to or value of

the Property. All expenditures and expenses of the nature in this paragraph mentioned, and such expenses and fees as may be incurred in the protection of said Property and the maintenance of the lien of this Mortgage, including the fees of any attorney employed by Bank in any litigation or proceeding affecting this Mortgage, the Note of the Property or in preparation for the commencement or defense or any proceeding or threatened suit or proceeding, shall be immediately due and payable by Borrower, with interest thereon at the interest rate provided in the Note.

27. CAPTIONS; SUCCESSORS AND ASSIGNS. The captions of this Mortgage are for convenience and reference only. They in no way define, limit or describe the scope or intent of this Mortgage. All the terms and conditions of this Mortgage and the other Credit Documents shall be binding upon and inure to the benefit of the heirs, successors and assigns of the Borrower.

28. 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 and 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.

IN WITNESS WHEREOF, Borrower has executed this Mortgage.

IF BORROWER IS AN INDIVIDUAL(S):

[Signature] Date: November 03, 1990
Individual Borrower Michael J. Berry

[Signature] Date: November 03, 1990
Individual Borrower Lauren J. Berry

Individual Borrower Date: _____

Individual Borrower Date: _____

90545963

UNOFFICIAL COPY

9 0 5 4 9 9 3 9

AJH 9/22/89

STATE OF ILLINOIS

COUNTY OF Cook ss:

I, the undersigned, a Notary Public in and for said county, in the State aforesaid, DO HEREBY CERTIFY THAT

Michael J. Berry and Lauren J. Berry personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that he signed, sealed and delivered the said instrument as their free and voluntary act, for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and official seal this 3rd day of November 1990.

Nicholas Begrowicz
Notary Public

Commission expires: 8-29-94

MAIL 90 This document has been prepared by:

Khim Lee
10 E. Dundee Road
Buffalo Grove, IL 60089

P.T.I.# 03-06-217-004

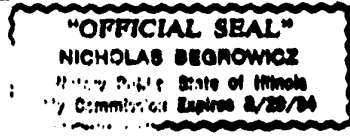
IF BORROWER IS A TRUST:

By: not personally but solely as aforesaid

By: Its

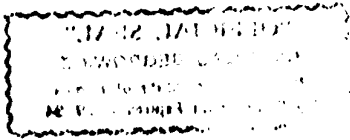
ATTEST:

Its



90549969

UNOFFICIAL COPY



Property of Cook County Clerk's Office