

UNOFFICIAL COPY

Copyright by E.J. Enterprises FOR BUSINESS MORTGAGES AND MORTGAGES IN EXCESS OF \$25M BY INDIVIDUALS AND WISCONSIN NON-CONSUMER ACT MORTGAGES OF \$25M OR LESS
R.E. MTG (10/1/88)

THIS SPACE RESERVED FOR RECORDING DATA

REAL ESTATE MORTGAGE

(Includes Cross Collateral and Future Advance Provisions)

(Revised For Wisconsin Marital Property Act)

George F. Seyk and Liane H. Seyk, his wife

("Mortgagor",

whether one or more) mortgages, conveys and warrants to First Bank (N.A.)

("Mortgagee")

in consideration of the sum of Ninety-Thousand and no/100

Dollars (\$ 90,000.00)

loaned or to be loaned to George F. Seyk and Liane H. Seyk

("Borrower", whether one or more) evidenced by Borrower's note(s) or agreement(s) dated

June 29, 1990

the real estate described below, together with all existing and future privileges, fixtures, hereditaments, improvements, appurtenances, rents, leases, issues and profits, government entitlements, and all awards and payments made as a result of the exercise of the right of eminent domain (all called the "Property"). This Mortgage is also given to secure any extension(s) and/or renewal(s) of the note(s) or agreement(s) and the payment of any and all other sums advanced hereunder or secured by this Mortgage as further described and permitted in Paragraph 4 below, for any reason, and to secure performance of the covenants, conditions and agreements contained herein or in any note, agreement or other evidence of any Obligation (as hereinafter defined).

1. Description of Property. (This Property is not the homestead of Mortgagor.)
(Is/Is not)

Tax Key # 04-20-400-030-0000

Lot 25 in Unit 2 in John Heeren's Glenway Subdivision of that part of the West half of the North half of the Southeast Quarter in Section 20, Township 42, Range 12 East of the Third Principal Meridian, in Cook County, Illinois.

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- If checked here, description is contained on attached Exhibit "A".
- If checked here, this Mortgage is a purchase money mortgage.
- If checked here, this Mortgage is a "Construction Mortgage" pursuant to Wis. Stat. 409.313(1)(a) in that it secures an obligation incurred for the construction of an improvement on land including the cost of land, or secures an Obligation incurred to refinance a Construction Mortgage.
- If checked here, Condominium Rider is attached hereto (in which all references to "Lender" shall be deemed to refer to Mortgagee).

2. Warranties. Mortgagor warrants:

(a) Title. Clear and marketable title to the Property without the execution hereof by any other person excepting only restrictions and easements of record, zoning and other governmental ordinances and building restrictions, current taxes and assessments not yet due and: Mortgage to Horizon Federal Savings Bank for \$ 84,000.00, dated 3-30-87, recorded 4-2-87, Document #87173546;

(If blank there are no others) and shall defend such title against all claims and shall on demand execute and deliver to Mortgagee any additional instrument necessary to convey to Mortgagee the title described above; and

(b) Environmental Laws. Mortgagor represents and warrants to Mortgagee that (1) no substances or materials have been, are or will be stored, deposited, treated, recycled or disposed of on, under or at the Property, which substances or materials, if known to be present on, at or under the Property, would require cleanup, removal or some other remedial action under any federal, state or local laws, regulations, ordinances, codes or rules relating to the discharge of air pollutants, water pollutants or process wastewater or otherwise relating to hazardous or toxic substances or materials ("Environmental Laws"); (2) there are no conditions existing currently or likely to exist during the term of this Mortgage which would subject Mortgagor to damages, penalties, injunctive relief or cleanup costs under any Environmental Law, and (3) Mortgagor is not subject to any judgment, decree, order or citation relating to or arising out of any Environmental Law. Mortgagor shall indemnify and hold harmless Mortgagee from all loss, cost (including actual attorneys' fees and legal expenses), liability and damage whatsoever incurred by Mortgagee by reason of any violation of this paragraph or any Environmental Law involving the Property, or by reason of the imposition of any governmental lien for the recovery of environmental cleanup costs expended by reason of such violation.

3. Escrow. Interest n/a be paid on escrowed funds required under Paragraph 8(a) below.
(will/will not)

301 395

1500

3000 876

90325840

DEPT-01 RECORDING

#2222 TRAN 1291 07/09/90 10:03:00

#7210 # B *-90-325840

COOK COUNTY RECORDER

\$15.00

RETURN TO (ATTN: Brigitte)
First Bank (N.A.)
4200 W. Brown Deer Road
Brown Deer, WI 53217

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17. **Cost, Expenses and Attorney's Fees.** In case of default, whether or not before or after judgment, all Mortgagee's expenses for purposes of collection, including actual attorney's fees, and all costs and disbursements if legal action is necessary, and all expenses of Mortgagee including, without limitation, title evidence, surveys, appraisals and insurance shall be added to the Obligations, and become due as incurred, and in the event of foreclosure, be included in an (amended) judgment. In the event the position of Mortgagee is challenged in any manner or Mortgagee is named in any action, proceeding or lawsuit for any reason involving any Mortgagor, Borrower, Obligor or the Property and immediately upon the request of Mortgagee, the Mortgagor and any Obligor shall pay Mortgagee all expenses of every kind pertaining thereto including, without limitation, its actual attorney's fees, costs, disbursements, and expenses, which sum if not paid shall be added to the Obligations and become due as incurred, and may be included in any judgment.

18. **Word Form.** Wherever the context of their usage permits, words in singular form shall include the plural form and words in the plural form shall include the singular form with no distinction between gender.

19. **Severability and Cumulative Remedies.** Invalidity or unenforceability of any provision of this Mortgage shall not affect the validity or enforceability of any other provisions. The rights and remedies granted to Mortgagee in this Mortgage are cumulative, and are in addition to the remedies granted by law.

20. **Obligors, Successors and Assigns.** The Obligations of all Mortgagors and Obligors are joint and several. This Mortgage benefits Mortgagee, its successors and assigns, and binds all Mortgagors and Obligors and their respective heirs, personal representatives, successors, assigns, trustees, and receivers.

21. **Applicable Law.** This Mortgage shall be governed and interpreted by the internal laws of the State of Wisconsin in effect on the date of its execution as such laws may be amended or created from time to time while this Mortgage is in existence.

22. **Captions.** The captions shall not be deemed to be fully inclusive of all provisions in any captioned paragraph and are included for reference purposes only.

23. **Complete Agreement.** Unless typed below or attached hereto as a Rider and initialed by the parties, this Mortgage expresses completely, exclusively and finally all the agreements, conditions and covenants of the parties and does not need evidence (written or oral) of prior, contemporaneous or subsequent statements or representations (express or implied) to reflect the intentions of the parties.

24. **Other Provisions** (if blank there are none)

Signed and Sealed this 29th day of June, 19 90 Mortgagor signs freely and voluntarily, and without duress or coercion.

MORTGAGOR ACKNOWLEDGES READING THIS MORTGAGE AND RECEIVING A COPY OF IT.

(Name of Corporation or _____) (SEAL)

By: _____ (SEAL) *George F. Seyk* _____ (SEAL)

(_____ President or _____) _____ (SEAL)

• _____
• *Liane H. Seyk* _____ (SEAL)

Attest: _____ (SEAL) _____ (SEAL)

(_____ Secretary of _____) _____

AUTHENTICATION

OR ACKNOWLEDGMENT/CERTIFICATE OF NOTARIAL ACT

STATE OF WISCONSIN
_____ Milwaukee _____ County } ss.

This instrument was
acknowledged before me on June 29, 19 90
by George F. Seyk and Liane H. Seyk

as Husband and Wife
of _____
(name of person(s))
_____ (type of authority e.g. officer, trustee, etc.)
_____ (name of party to whom instrument was executed)

• *Mark R. Fenske* _____
Dated June 29, 19 90
Notary Public _____ Milwaukee _____ County Wis
My Commission (Expires) 5-23-93

Title: Member State Bar of Wisconsin or _____
authorized under Sec. 706.06 Wis. Stats.

This instrument was drafted by
Brigitte Dietrich

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9. **Default, Acceleration, Remedies.** Any one or more of the following events shall constitute a default of this Mortgage and of any and all Obligations, unless waived in writing by Mortgagee:

- (a) A failure by any Obligor to make payment on any Obligation when due;
- (b) If any representation or warranty made in this Mortgage or otherwise to induce Mortgagee to extend credit to any Obligor is false in any material respect when made;
- (c) Any Obligor or a surety for any Obligation dies or ceases to exist;
- (d) Mortgagor fails to observe or perform or breaches any of the covenants or agreements contained in this Mortgage;
- (e) The breach of any term in any evidence of or documents relating to any Obligation or other agreement of any Obligor;
- (f) The breach of any term of any Construction Loan Agreement relating to the Property to which Mortgagee is a party;
- (g) The default by Mortgagor, as lessee, vendee or tenant, under lease of or contract with respect to the Property;
- (h) Any act done or permitted by any Obligor whereby the Property shall be weakened, diminished, or impaired;
- (i) If any Obligor shall (1) apply for or consent to the appointment of a receiver or trustee for any Obligor or any of Obligor's assets, (2) be unable or admit in writing an inability to pay debts as they mature, (3) make a general assignment for the benefit of creditors, (4) be adjudicated a bankrupt or insolvent, or an order for relief is entered against any Obligor, (5) file a voluntary petition seeking reorganization or an arrangement with creditors or take advantage of any insolvency law or answer admitting the material allegations of a petition filed against any Obligor in any bankruptcy, reorganization or insolvency proceeding, or (6) take any action for the purpose of effecting any of the foregoing;
- (j) Any event which causes Mortgagee in good faith to deem itself insecure;
- (k) If Mortgagor is a corporation, then (1) a transfer or sale by Mortgagor or shareholders of Mortgagor of a majority of the issued and outstanding stock of any class or type of Mortgagor for any reason, or (2) the issuance by Mortgagor of stock of any class or type to any person(s) or in any manner so as to change the now existing proportionate ownership and control interests of the existing shareholders of Mortgagor;
- (l) If Mortgagor is a partnership, then any change in the identity or proportionate interest or control of its partners; or
- (m) If Mortgagor is an individual, then the death of the spouse of any Obligor or any change in marital status or domicile of any Obligor.

Upon the occurrence of an event of a default, all Obligations including all amounts which may be or have been advanced by Mortgagee to protect the security of this Mortgage shall, at the option of the Mortgagee and without notice, (notice hereby being expressly waived) become due and payable immediately and Mortgagee may collect same in a suit at law and/or by foreclosure of this Mortgage by action or by the exercise of any other remedy available at law or equity now existing or existing at the time of default and the judgment or decree in any action shall include all Obligations together with interest at the default interest rates in the evidences(s) of the Obligations. Mortgagor consents to venue for any such legal proceedings, at Mortgagee's option, in the county in which (i) Mortgagee has its principal office, (ii) Mortgagor or the Property (or any part hereof) is located, or (iii) this Mortgage was executed.

10. **Authority of Lender to Perform for Mortgagor.** If Mortgagor fails to perform any covenants or agreements as herein set forth, Mortgagee may, at its sole option and discretion, perform or cause them to be performed, including without limitation, signing Mortgagor's name. Any amounts paid by Mortgagee pursuant hereto shall bear interest at the highest interest rate of any Obligation, computed from the date of Mortgagee's expenditure to date of Mortgagor's repayment and be secured by this Mortgage. Mortgagor shall repay on demand any such amount so paid by Mortgagee. Mortgagee has no duty to inquire as the validity of any charges, tax, assessment, tax title or other claim or expense against the Property, and a receipt for payment thereof shall be conclusive of their validity and amount.

11. **Lien and Set Off of Mortgagor's Credit Balance.** Mortgagor grants Mortgagee a security interest in and lien upon, without any limitation, any property, credit balance, escrow or other money, now or hereafter owed Mortgagor by Mortgagee; and, in addition, Mortgagor agrees that Mortgagee may at any time upon the occurrence of an event of default without notice or demand set off against any such property, credit balance, escrow, or other money, any Obligations whether due or not.

12. **Power of Sale.** In the event of foreclosure, it shall be lawful for Mortgagee to cause the Property to be sold at public sale and cause execution and delivery to purchasers of deeds(s) of conveyance pursuant to statute.

13. **Waiver.** Mortgagee may waive any default without waiving any other subsequent or prior default by any Obligor. No failure or delay of Mortgagee to exercise any right hereunder shall operate as a waiver thereof; nor shall any single or partial exercise by Mortgagee of any such right preclude any other or further exercise thereof, or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

14. **Assignment of and Entitlement to Rents and Leases.** As additional security for the Obligations, Mortgagor hereby assigns, sells, transfers, demises and sets over to Mortgagee all rents, issues, profits and leases now or hereafter due under or by virtue of any lease, whether written or oral, or any letting of, or any agreement for the use or occupancy of any part of the Property. Mortgagee may, at its sole option without any prior approval of Mortgagor, notify any or all tenants to pay directly to Mortgagee all rent, issues, and profits arising out of the Property, and all payments required to be made pursuant to or by virtue of any lease agreement(s). Mortgagee may apply same, at its option and without regard to priority to application, to payment of taxes, insurance premiums, operating expenses, attorney's and accountant's fees and expenses, and on the principal and interest of any Obligation, after deduction of a reasonable fee for services rendered in collection and management. This assignment shall continue until all Obligations secured by this Mortgage have been fully paid and satisfied. The Mortgagee shall be entitled to all rent, issues, profits and leases pertaining to the Property immediately upon the occurrence of any event of default described in Paragraph 9 above without taking any action (including seeking the appointment of a receiver, obtaining possession of the Property or making demand).

15. **Receiver.** Upon the commencement or during the pendency of an action to foreclose this Mortgage or enforce any other remedies of Mortgagee, without regard to the adequacy or inadequacy of the Property as security for the Obligations, and whether or not waste is being committed or occurring, Mortgagee may seek and the court appoint a receiver of the Property (including homestead interest) to serve without bond and take possession of the Property and require and collect its rents, issues and profits and all payments required to be made pursuant to or by virtue of any lease, to hold and apply the same as directed by the court, and to exercise such other powers as may be granted until the receivership shall cease.

16. **Foreclosure Without Deficiency Judgment.** If the Property is a one-to four-family residence that is owner-occupied at the commencement of a foreclosure, a farm, a church, or owned by a tax-exempt charitable organization, Mortgagor agrees to the provisions of sec. 846.101, Wis. Stats., as the same may be amended or renumbered from time to time, permitting Mortgagee, upon waiving the right to judgment for deficiency, to hold the foreclosure sale of the Property of 20 acres or less six months after a foreclosure judgment is entered. If the Property is other than a one-to four-family residence that is owner-occupied at the commencement of a foreclosure, a farm, a church or owned by a tax exempt charitable organization, Mortgagor agrees to the provisions of sec. 846.103, Wis. Stats., as the same may be amended or renumbered from time to time, permitting Mortgagee, upon waiving the right to judgment for deficiency, to hold the foreclosure sale of the Property three months after a foreclosure judgment is entered. Mortgagee is also entitled to all other or additional remedies permitted by law existing on the date this Mortgage is signed and/or existing at the time of the default.

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4. Present and Future Advances and Mortgage Security. The term "Obligor" as used herein shall include, without limitation the Mortgagor, Borrower, maker, co-maker, endorser and/or guarantor or any of the Obligations (as hereinafter defined). The term "Obligation(s)" as used herein shall include, without limitation, all of the debts, notes, agreements, guaranties, obligations and liabilities of whatever nature or amount (and any extension, renewals or modifications thereof, lost opportunity costs, post-judgment costs, disbursements, and actual attorneys' fees and interest on interest arising out of credit or other financial accommodation previously granted, contemporaneously granted or granted in the future by Mortgagee to or at the request of any Obligor, the performance of all covenants, conditions and agreements contained in this Mortgage or in any evidence of or document relating to any of the foregoing, and costs and expenses of collection or enforcement of the Obligations. This Mortgage shall continue to be a lien on the Property while any Obligations of any Obligor to Mortgagee remain unpaid regardless of when such Obligations arose, until such time as this Mortgage is released or satisfied of record. Since this Mortgage secures all Obligations of any Obligor to Mortgagee, it is acknowledged it may secure Obligations in a greater dollar amount than the amount stated in this Mortgage and recording this Mortgage constitutes notice that the amount set out above may not be the actual amount of the Obligations due Mortgagee. Any advance under this Mortgage shall be discretionary at the sole option of Mortgagee, unless otherwise agreed in writing by Mortgagee.

5. Taxes and Other Charges. To the extent not paid to Mortgagee under Paragraph (8)(a), Mortgagor shall pay when they become due and shall deliver to Mortgagee receipts showing the timely payment thereof, all taxes, special and other assessments and charges which may be levied or assessed against the Property by virtue of any law, ordinance or assessment now or hereafter in force upon or against the Property, or against Mortgagee or upon this Mortgage, or the Obligations secured by this Mortgage, or upon Mortgagee's interest in the Property.

6. Insurance. Mortgagor shall keep the improvements, fixtures, and appurtenances on the Property insured against direct or indirect loss or damage occasioned by fire, extended coverage perils and such other hazards as Mortgagee may require, through insurers satisfactory to Mortgagee, in amounts without co-insurance at least equal to the full value of the improvements, fixtures and appurtenances on Property and shall pay the premiums when due. The policies shall contain the standard mortgagee loss payee clause in favor of Mortgagee (which clause shall identify Mortgagee as "mortgagee loss payee") and each such insurer is hereby authorized and directed to make payments for loss directly to Mortgagee unless Mortgagee otherwise agrees in writing. The originals of all policies covering the Property shall be deposited with Mortgagee. Mortgagor shall promptly give notice of loss to insurer(s) and Mortgagee. All proceeds from such insurance shall be applied, at the Mortgagee's option, either to any of the Obligations (without prepayment penalty) or to the restoration of improvements, fixtures and appurtenances on the Property. In the event of foreclosure of this Mortgage or other transfer of title to the Property in extinguishment of all or part of the Obligations, all right, title and interest of Mortgagor in and to any insurance then in force shall pass to the purchaser or grantee.

7. "Due on sale" and No Transfer. In the event that without Mortgagee's prior written consent the Property or any part thereof either is sold, assigned, leased, mortgaged, conveyed or otherwise transferred, or any legal or equitable interest or title in all or part of the Property vests in any person(s) or entity(ies) other than the Mortgagor, for any reason whatsoever, including, without limitation, by virtue of the Wisconsin Marital Property Act, all Obligations shall become immediately due and payable at Mortgagee's option. Mortgagee may, without notice to Mortgagor, deal with any transferee or with his interest in the same manner as with Mortgagor, without in any way discharging Mortgagor's or any Obligor's liability for the Obligations. In the event there is a transfer or conveyance of any interest in the Property as described above, Mortgagee shall be entitled to all payments and/or consideration due to Mortgagee pursuant to or by virtue of that transfer or conveyance; this paragraph shall not in any manner be construed to limit any of the rights or remedies of the Mortgagee, nor shall it in any manner be construed to imply or otherwise indicate that the Mortgagee consents to any such transfer.

8. Covenants of Mortgagor. Prior to the release or satisfaction of this Mortgage, Mortgagor will, unless otherwise agreed in writing by Mortgagee:

(a) Escrow. Pay Mortgagee in escrow an amount (either in single payment, monthly fractional payments, or a combination thereof, at Mortgagee's option) estimated by Mortgagee to be sufficient to enable Mortgagee to pay at least 30 days before they become due (1) all taxes, assessments, and other similar charges levied against the Property; (2) all insurance premiums on any required policy or policies of insurance hereunder; and (3) premiums for any mortgage guaranty insurance (if any of the Obligations secured hereby are guaranteed by such insurance). Upon demand, Mortgagor shall pay Mortgagee such additional amounts as are necessary to enable Mortgagee to pay these items in full when due. Escrowed funds may be commingled with Mortgagee's general funds. If interest is to be paid on escrowed funds, it will be paid as required by law at the lowest lawful rate. Mortgagee shall not be obliged to make a payment for any such purpose more than once a year.

(b) Condition and Repair. Keep the Property in good, tenantable condition and repair, rebuild, restore or replace damaged or destroyed improvements, fixtures and appurtenances; and pay all charges for repairs and any and all expenses incident to the Property so that no lien may be created against the Property, and exhibit upon demand evidence of such payment at Mortgagee's office.

(c) Liens. Keep the Property free from interests, liens and encumbrances except the lien of this Mortgage and any exceptions set forth in Paragraph 2(a) above, pay or cause to be paid when they become due all indebtedness which may be secured by a lien on the Property superior to the lien of this Mortgage and deliver to Mortgagee receipts showing the timely payment thereof.

(d) Waste. Not commit or permit waste upon the Property.

(e) Alteration or Removal. Not remove, demolish or materially alter any part of the Property except Mortgagor may remove a fixture provided the fixture is promptly replaced with another fixture of at least equal utility and quality.

(f) Ordinances and Inspection. Comply with all laws, ordinances and regulations affecting the Property (including without limitation Environmental Laws) and permit Mortgagee or its authorized representatives to enter the Property at reasonable times to inspect it and at Mortgagee's option repair or restore it.

(g) Subrogation. Mortgagee is hereby subrogated to all rights, remedies, claims and liens of any person or any Obligor arising in whole or part from the proceeds of any portion of any Obligation. Mortgagee is also subrogated to the lien of any mortgage, other lien or security interest discharged in whole or in part by any portion of the proceeds of any Obligation.

(h) Condemnation. Pay to Mortgagee all compensation and awards received from any governmental authority or other lawful authority for any taking as a result of the exercise of the right of eminent domain or other condemnation proceedings (including payments in compromise thereof) for any loss, taking, diminution, or damages (whether temporary or permanent) to all or part of the Property. Mortgagor hereby assigns such compensation and awards to Mortgagee which is hereby authorized to collect and receive the same from such authorities. Such compensation shall be applied as Mortgagee determines to rebuilding the Property or any Obligations (without prepayment penalty).

(i) Change in Use. Not cause or permit any change to be made in the general nature of the occupancy of the Property.

(j) Zoning. Not initiate or acquiesce in any zoning reclassification, and

(k) Adverse Possession. Not permit use of the Property which with the passage of time could result in the creation of any right of use or claim of adverse possession or easement on, to or against any part of the Property.

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