

# UNOFFICIAL COPY

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## SECOND MORTGAGE

RECORDS & CLERK'S OFFICE  
1990 NOV 26 11:57 AM  
COOK COUNTY RECORDER

THIS MORTGAGE is made the 26th day of November, 1990 by and between DEBRA A. COHN, of 1412-D Wrightwood, Chicago, Illinois, and EARL COHN, of 1633 Dunham Road, Palm Springs, California (collectively, the "Mortgagor"), for the benefit of The Dorothy Cohn Living Trust u/t/d/ May 12, 1987, of Palm Springs, California (the "Mortgagee").

WHEREAS, the Mortgagor is the owner of the fee simple title to the real estate and the buildings and improvements thereon situated and being in the County of Cook, State of Illinois and more particularly described in Exhibit A attached hereto (which real estate, building, and improvements are collectively called the "Property"); and

WHEREAS, Mortgagee has made certain loans to Debra A. Cohn and Steven J. Cohn, her husband, in connection with the Mortgagor's purchase of the Property, and Mortgagee has further agreed to guaranty repayment of the loan secured by the "Senior Mortgage", as herein defined, and Mortgagor has agreed to secure the repayment obligations of Mortgagor and Steven J. Cohn with respect thereto with a second mortgage on the Property;

WITNESSETH, for the considerations recited above and to secure the payment of an indebtedness in the sum of Seventy-Two Thousand Six Hundred Twenty-Five (\$72,625) Dollars, to be paid according to that certain mortgage note bearing even date herewith (the "Mortgage Note"), and to secure any other obligations owing the

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Mortgagee by the Mortgagor and Steven J. Cohn (the Mortgage Note plus any other such obligations are referred to in the aggregate as the "Indebtedness"), up to and including an aggregate indebtedness of \$334,500, the Mortgagor hereby mortgages to the Mortgagee:

All certain parcels of land and improvements thereon described herein as the Property,

TOGETHER with all right, title and interest of the Mortgagor in and to the land lying in any streets and roads in front of and adjoining the Property;

TOGETHER with all improvements, structures, fixtures, chattels and articles of personal property now or hereafter attached to or used in connection with the Property, including but not limited to furnaces, boilers, oil burners, radiators and piping, plumbing and bathroom fixtures, refrigeration, air conditioning and sprinkler systems, wash-tubs, sinks, gas and electric fixtures, stoves, ranges, awnings, screens, window shades, elevators, motors, refrigerators, kitchen cabinets, incinerators, plants and shrubbery and all other equipment and machinery, systems, appliances, fittings and fixtures of every type and kind in or used in the operation of the buildings standing on the Property, together with any and all proceeds therefrom, replacements thereof and additions thereto;

TOGETHER with all awards heretofore and hereafter made to the Mortgagor for taking by eminent domain the whole or any part of the Property or any easement thereon, including any awards for changes of grade of streets, which such awards are hereby assigned to the

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Mortgagee who is hereby authorized to collect and receive the proceeds of such awards and to give proper receipts and acquittance therefor, and to apply the same toward the payment of the Indebtedness, notwithstanding the fact that the amount owing thereon may not then be due and payable; and the Mortgagor hereby agrees, upon request, to make, execute and deliver any and all assignments and other instruments sufficient for the purpose of assigning said awards to the Mortgagee free, clear and discharged of any encumbrances of any kind or nature whatsoever; and

The Mortgagor covenants and agrees with the Mortgagee as follows:

1. Second Mortgage. This is a second mortgage subject and subordinate to that certain mortgage dated July 30, 1990 and given by the Mortgagor hereunder to Devenmuehle Mortgage, Inc. of Schaumburg, Illinois, with respect to the parcel identified herein as Exhibit A (which mortgage is referred to herein as the "Senior Mortgage").

2. Payment of Principal and Interest. The Mortgagor will pay the Indebtedness secured hereby as herein provided.

3. Hazard Insurance. The Mortgagor will keep any buildings on the Property insured against loss by fire for the benefit of the Mortgagee; they will assign and deliver such policies of insurance to the Mortgagee; and they will reimburse the Mortgagee for any premiums paid for insurance by the Mortgagee upon the Mortgagor's failure so to insure the Property or buildings thereon, or in so assigning and delivering the said policies.

4. Preservation of Property. No building on the Property shall be altered, removed or demolished without the consent of the Mortgagee, nor shall Mortgagor commit waste or allow the Property to deteriorate.

5. Payment Schedule and Acceleration. The principal sum secured hereby with interest accrued thereon, as provided in the Mortgage Note, will be paid on demand. At the election of the Mortgagee, and without notice, the whole of said principal and interest shall become due upon default in the payment of principal or interest for twenty (20) days after demand therefor, or any other item of Indebtedness hereunder, or if any default shall occur and continue for twenty (20) days in the performance of any agreement contained herein (in which event such election may be made at any time after the expiration of said twenty (20) days, without notice), including, without limitation, a default in the payment of any tax, water rate, sewer rent or assessment on the Property; or upon default after notice and demand either in assigning and delivering the policies insuring the Property and buildings thereon against loss by fire or in reimbursing the Mortgagee for premiums paid on such insurance, as hereinbefore provided; or upon default in furnishing upon request a statement of the amount due on the mortgage and whether any offsets or defenses exist against the Indebtedness, as hereinafter provided, or for such other causes as are set forth in Paragraph 13.

6. Payment of Taxes. The Mortgagor will pay when due all general and other real estate taxes, assessments, sewer rents or

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water rates on the Property, and, in default thereof, the Mortgagee may (but shall not be obligated to) pay the same.

7. Acknowledgement of Mortgage. The Mortgagor within five days upon request will furnish a written statement duly acknowledging the amount due on the Mortgage Note (or other obligations to the Mortgagee) and whether any offsets or defenses exist against the Indebtedness.

8. Notices. Any notices and demands or requests required or provided for herein shall be made in writing and served in person or by certified mail, return receipt requested, at the address shown at the head of this Agreement (or such other address of which either party may from time to time notify the other in writing).

9. No Other Liens on Property. The Mortgagor warrants the good and marketable title to the Property at all times until the Mortgage Note is paid in full, subject only to the Senior Mortgage and to easements, public rights of way and covenants of record not adversely materially affecting the value of the Property or the residential use thereof. Mortgagor will promptly make such payment or take such other actions that may be necessary to remove any lien placed on the property (other than the Senior Mortgage hereinbefore described).

10. Terms of Insurance Coverage. The fire insurance policies required by paragraph 3 above shall contain the usual extended coverage endorsement and shall name the Mortgagee as a loss payee as its interest may appear. In addition, the Mortgagor, within thirty days after notice and demand, will keep the Property insured

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against any other hazard that may reasonably be required by the Mortgagee.

11. Protection of Mortgagee's Rights. If any action or proceeding be commenced (except an action to foreclose this Mortgage or to collect the Indebtedness) to which action or proceeding the Mortgagee is made a party, or in which it becomes necessary to defend or uphold the lien of this Mortgage, all sums paid by the Mortgagee to prosecute or defend the rights and lien created by this Mortgage (including reasonable attorneys' fees and legal expenses) shall be paid by the Mortgagor, together with interest thereon at the rate of twelve (12) percent per annum; and any such sum and the interest thereon shall be a lien on the Property, prior to any right or title to, interest in or claim upon the Property attaching or accruing subsequent to the lien of this Mortgage, and shall be deemed to be secured by this Mortgage. In any action or proceeding to foreclose this Mortgage, or to recover or collect the Indebtedness, the provisions of law respecting the recovery of costs, disbursements and allowances shall prevail unaffected by this covenant.

12. Assignment of Rents. The Mortgagor hereby assigns to the Mortgagee the rents, issues and profits of the Property as further security for the payment of the Indebtedness, and the Mortgagor grants to the Mortgagee the right to enter upon the Property for the purpose of collecting the same and to let the Property or any part thereof, and to apply the rents, issues and profits, after payment of all necessary charges and expenses, on

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account of the Indebtedness. This assignment and grant shall continue in effect until the Indebtedness is paid in full. The Mortgagee hereby waives the right to enter upon the Property for the purpose of collecting said rents, issues and profits, and the Mortgagor shall be entitled to collect and receive said rents, issues and profits until a default shall have occurred under any of the covenants, conditions or agreements contained in this Mortgage, and agrees to use such rents, issues and profits in payment of principal and interest becoming due on the Indebtedness and in payment of any taxes, assessments, sewer rents, water rates and carrying charges becoming due against said Property, but such right of the Mortgagor may be revoked by the Mortgagee on five days' written notice upon the occurrence of any default. The Mortgagor will not, without the written consent of the Mortgagee, receive or collect rent from any tenant of the Property or any part thereof for a period of more than one month in advance, and in the event of any default under this Mortgage will pay monthly in advance to the Mortgagee, or to any receiver appointed to collect said rents, issues and profits, the fair and reasonable rental value for the use and occupation of the Property, or of such part thereof as may be in the possession of the Mortgagor, and upon default in any such payment will vacate and surrender the possession of the Property to the Mortgagee or to such receiver, and in default thereof may be evicted by summary proceedings.

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13. Default and Remedies.

(a) Events of Default. In addition to the Mortgagee's right of acceleration upon the Mortgagor's nonpayment of any item of Indebtedness, and the other events of default enumerated in Paragraph 5 hereof, the whole of the principal sum of the Indebtedness secured hereby and all interest accrued thereon shall become due, at the option of the Mortgagee: (i) after Mortgagor's failure to exhibit to the Mortgagee, within ten days after demand therefor, receipts showing payment of all insurance premiums, taxes, water rates, sewer rents and assessments on the Property; (ii) after the actual or threatened alteration, demolition or removal of any building on the Property without the written consent of the Mortgagee; (iii) after the assignment of the rents of the Property or any part thereof without the written consent of the Mortgagee; (iv) if the Property is not maintained in good repair; (v) after failure to comply with any order or notice of violation of law or ordinance issued by any governmental agency or department claiming jurisdiction over the Property within three months from the issuance thereof; (vi) if on application of the Mortgagee two or more fire insurance companies lawfully doing business in the state in which the Property is located refuse to issue policies insuring the Property; (vii) in the event of the removal, demolition or destruction in whole or in part of any of the fixtures, chattels or articles of personal property covered hereby, unless the same are promptly replaced by similar fixtures, chattels and articles of personal property at least equal in quality and



condition to those replaced, free from chattel mortgages or other encumbrances thereon and free from any reservation of title thereto; (viii) if the Mortgagor fails to keep, observe and perform any of the other covenants, conditions or agreements contained in this Mortgage; or (ix) if the Mortgagor fails to keep, observe and perform any of the covenants, conditions or agreements contained in any prior mortgage or fails to repay to the Mortgagee the amount of any installment of principal or interest which the Mortgagee may have paid on such mortgage with interest thereon as provided in paragraph 14 hereof.

(b) Remedies. In addition to any other remedy herein specified, if any default under this Mortgage shall occur, Mortgagee may, at its option: (i) declare the entire Indebtedness to be immediately due and payable without notice or demand (each of which is hereby expressly waived by Mortgagor), whereupon the same shall become immediately due and payable; (ii) institute proceedings for the complete foreclosure of this Mortgage; (iii) institute proceedings to collect any delinquent installment or installments of the Indebtedness by proceeding with foreclosure of this Mortgage with respect to any delinquent installment or installments of such Indebtedness, and any sale of the Property under such a foreclosure proceeding shall be subject to and shall not affect the unmatured part of the Indebtedness, and this Mortgage shall be and continue as a lien on the Property securing the unmatured Indebtedness; (iv) take such steps to protect and enforce its rights whether by action, suit or proceeding in equity

or at law for the specific performance of any covenant, condition or agreement in the Mortgage Note or in this Mortgage, or in aid of the execution of any power herein granted, or for any foreclosure hereunder, or for the enforcement of any other appropriate legal or equitable remedy or otherwise as Mortgagee shall elect; or (v) enforce this Mortgage in any other manner permitted under law.

14. Mortgagor's Representations; Mortgagee's Payment of Senior Mortgages.

The Mortgagor covenants, represents and warrants that on the date hereof there is no uncured default on its part under the Senior Mortgage, and there are no outstanding claims of indebtedness for labor or materials furnished in connection with the construction, improvements, alteration or repair of any building or other improvements on the Property. The Mortgagor will comply with all of the terms, covenants and conditions of the Senior Mortgage on the part of the Mortgagor to be performed or observed. If the Mortgagor fails to pay any installment of principal or interest on the Senior Mortgage when the same becomes due, the Mortgagee may (but shall not be obligated to) pay the same, and the Mortgagor on demand will repay the amount so paid with interest thereon at the rate of thirteen (13) percent per annum, and the same shall be added to the Indebtedness and be secured by this Mortgage. The Mortgagor shall not, however, make any prepayments of principal or of interest under the Senior Mortgage unless the Mortgagor shall first consent in writing thereto.

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15. Further Instruments. The Mortgagor shall, at the request of the Mortgagee, execute and/or deliver to the Mortgagee any and all further instruments which the Mortgagee shall reasonably require in order further to secure and perfect the lien of this Mortgage.

16. Severability. If any term, covenant or condition of this Mortgage shall be held to be invalid, illegal or unenforceable in any respect, this Mortgage shall be construed without such provision.

17. Governing Law; Cumulative Rights. The terms of this Mortgage shall be construed under the laws of the State of Illinois. The rights of the Mortgagee shall be cumulative and none shall be given effect to the exclusion of the others. No act of the Mortgagee shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision.

18. Non-Waiver. The waiver by the Mortgagee of any right hereunder or of any failure to perform or breach hereof by the Mortgagor shall not constitute a waiver of any other right hereunder or any other failure to perform or breach hereof by the Mortgagor, whether of a similar or dissimilar nature.

19. Expenses Incurred by Mortgagee. Any costs, damages, expenses or fees, including reasonable attorneys' fees and expenses, incurred by Mortgagee in connection with: (i) sustaining the lien of this Mortgage or its priority; (ii) obtaining any commitment for title insurance or title insurance policy; (iii) protecting the Property; (iv) protecting or enforcing any of

Mortgagee's rights hereunder; (v) recovering any of the Indebtedness; (vi) any litigation or proceedings (including, but not limited to, bankruptcy, probate and administrative law proceedings) affecting this Mortgage, the Indebtedness or the Property; or (vii) preparing for the commencement, defense or participation in any threatened litigation or proceedings as aforesaid, or as otherwise enumerated in paragraph 11 hereof, shall be so much additional Indebtedness secured hereby, and shall be immediately due and payable by Mortgagor, without notice, with interest payable thereon at the rate of thirteen (13) percent per annum.

20. Miscellaneous. This Mortgage may not be changed or terminated orally. The covenants contained herein shall run with the land and bind the Mortgagor, the heirs, successors and assigns of the Mortgagor, and all subsequent owners, encumbrancers, tenants and subtenants of the Property, and shall inure to the benefit of the Mortgagee, the personal representatives, successors and assigns of the Mortgagee and all subsequent holders of this Mortgage. Whenever words, including pronouns, are used in the masculine, they shall be read and construed in the feminine or neuter where the context would so require, and whenever words, including pronouns, are used in the singular or plural, they shall be read and construed in the plural or singular, respectively, where the context would so require.

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IN WITNESS WHEREOF, the undersigned have set their hand and seal at Chicago, Illinois on the day and year first above written.

Earl Cohn  
Earl Cohn

Debra A. Cohn  
Debra A. Cohn

Property of Cook County Clerk's Office

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STATE OF ILLINOIS )  
                                  ) SS  
COUNTY OF COOK  )

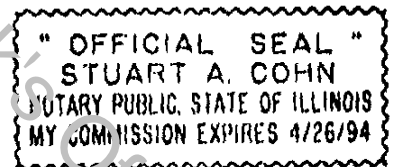
I, the undersigned, a Notary Public in and for said county and state, do hereby certify that EARL COHN AND DEBRA A. COHN personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and official seal, this 22th day of March, 1991.

My Commission Expires:

4/26/94

*Stuart A. Cohn*  
Notary Public



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This instrument prepared by and to be mailed to Stuart A. Cohn, Esq., Schoenberg, Fisher & Newman, Ltd., 222 South Riverside Plaza, Suite 2700, Chicago, Illinois 60606.

EXHIBIT "A"  
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PARCEL 1: LOT 22, IN EMBASSY CLUB SUBDIVISION UNIT THREE, BEING A RESUBDIVISION OF PART OF THE WEST 1/2 OF THE SOUTH WEST 1/4 OF SECTION 29, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2: EASEMENT FOR INGRESS AND EGRESS FOR THE BENEFIT OF PARCEL 1 AS CREATED BY DOCUMENT 90383785 IN COOK COUNTY, ILLINOIS

PEN: 14-29-302-073, 14-29-302-107

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Stuart Cohn  
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