

# UNOFFICIAL COPY

AMERICAN NATIONAL BANK OF MELROSE PARK

1836 North Broadway  
Melrose Park, Illinois 60160

## HOME EQUITY CREDIT LINE MORTGAGE

THIS MORTGAGE (the "Mortgage") is made as of January 28, 1992 between John Fortuna and Ramona E. Fortuna, 1836 N. Broadway, Melrose Park, Illinois 60160 ("Mortgagors")

and 92 between John Fortuna and AMERICAN NATIONAL BANK OF MELROSE PARK,

### ARTICLE I DEFINITIONS

1. Definitions. As used herein, the following terms shall have the following meanings, applicable equally to the singular and plural forms of each term:
- (a) **Agreement.** The Agreement and Disclosure for Home Equity Credit Line by and between Mortgagor and Mortgagee, dated as of the same date as this Mortgage. The Agreement provides for a floating rate open end credit line pursuant to which Mortgagee makes loans, as defined in the Agreement, up to the Credit Limit and Mortgagor repays Mortgage along with monthly finance charges due thereon.
  - (b) **Credit Limit.** The Credit Limit as specified in the Agreement is \$10,000.00 (Ten Thousand Dollars).
  - (c) **First Mortgage.** The mortgage against the land dated December 12, 1991 and recorded in the office of Cook County as Document Number 91659675.
  - (d) **First Mortgagee.** The holder of the First Mortgage:  
Polish Roman Catholic Union of America  
984 Milwaukee Ave, Chicago, Illinois 60622  
P.I.N. 03-36-100-027 (03-36-192-012)
  - (e) **Fixtures.** All fixtures, including improvements and additions thereto, now or hereafter located on or above the Land and that constitute or will constitute fixtures under the laws of Illinois and including any trade fixtures of any kind used under the Lease.
  - (f) **Impostions.** All real estate and personal property taxes and assessments, public or private water and sewer rates, utility fees, other governmental or municipal charges applicable to the Mortgaged Property, any interest or costs or penalties with respect to any of the foregoing, and charges for any easement or agreement maintained for the benefit of the Mortgaged Property, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever which may at any time prior to or after the execution of this Mortgage be assessed, levied, or imposed upon the Mortgaged Property or the rent or income received therefrom, or any use or occupancy thereof.
  - (g) **Improvements.** Any and all buildings or structures of any nature whatsoever, including replacements or additions thereto now or hereafter situated on the Land.
  - (h) **Indebtedness.** The principal of, interest on and/or all other amounts, finance charges, payments and premiums due under the Agreement and all other indebtedness of Mortgagor to Mortgagee under and/or secured by the Mortgage. Because this Mortgage is given to secure an open end credit line, the term "Indebtedness" shall include not only presently existing indebtedness under the Agreement, whether such loans are obligatory or to be made at the option of Mortgagee, to the same extent as if such future loans were made on the date of execution of this Mortgage, although there may be no loan made at the time of execution of this Mortgage.
  - (i) **Land.** The real property located at 1000 Carlow Drive, Des Plaines, Illinois

and described as follows on the attached Exhibit A

### EXHIBIT A

Lot 156 in Block 2 in Kennedy's Resubdivision of part of Kylemore Greens Subdivision, being a subdivision of Lot 2 in the Northwest Water Commission Resubdivision of the Northwest Water Commission Subdivision, Document No. 26578747 of part of the West 1/2 of Section 36, Township 42 North, Range 11, East of the Third Principal Meridian, according to the Plat thereof recorded January 23, 1991 as Document No. 9164312 and Certificate of Correction recorded January 31, 1991 as Document No. 91046976 in Cook County, IL.

Subject to: General real estate taxes for the year 1990 and subsequent years; including taxes which may accrue by reason of additional or new improvements; Restrictive Covenant Agreement dated January 16, 1990 and recorded as Document #80-90039210; Drainage Lateral Agreement dated February 20, 1990 and recorded as Document No. 90614647; Building Lines, public utility and drainage easements of record; Covenants, conditions and restrictions of record.

P.I.N. 03-36-100-027 (03-36-192-012)  
Commonly Known As: 1000 Carlow Drive, Des Plaines, Illinois

### ARTICLE II REPRESENTATIONS

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PAGE 1 OF 14 103 1A14114  
COOK COUNTY RECORDER

#### 1. Representations:

Mortgagor hereby represents to Mortgagee that:

##### 3.1 Validity of Security Documents:

(a) The execution, delivery and performance by Mortgagor of the Security Documents, and the borrowing evidenced by the Agreement, will not, to the best of Mortgagor's knowledge, create or perpetuate tax, any order of any court or other agency of government, or any Mortgagee, indenture, trust, agreement or other instrument which Mortgagor is liable in any amount or by which Mortgagor is bound for the payment of any sum, which would result in a material loss to Mortgagor or constitute a substantial encumbrance upon title, which would render such Mortgagee unable to collect on the other indebtedness or result in the creation or imposition of any form of charge or encumbrance of any nature whatsoever upon any of the property or assets, except as contemplated by the provisions of the Security Documents, and:

(b) The Security Documents are valid, executed and delivered by Mortgagor, constitute the legal valid and binding obligations of Mortgagor to accordance with the express terms of the Security Documents.

(c) Other Information: All other documents, papers, or information of any kind or character, which may be required to be furnished to Mortgagee by Mortgagor or furnished by the Mortgagee in connection with the Security Documents are accurate and correct in all material respects and complete insofar as completeness may be necessary to give Mortgagee a reasonable and accurate knowledge of the subject matter.

3.2 Mortgaged Property and Other Property: Mortgagor has good and marketable title to the property described in the Agreement, except for the First Mortgage and other encumbrances of record as of the date of this Mortgage. Mortgagor will presentably title to the described property and defend the same in Mortgage and all former covenants and defend the validity and priority of the first of the two mortgages.

~~EX-10005~~  
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Property of Cook County Clerk's Office

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ARTICLE III  
REPRESENTATIONS  
DEF-1 OF RECORDINGS  
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COK COUNTY RECORDER

COOK COUNTY RECORDER

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beneficial interest in the Mortgage. At any time without the prior written consent of the Mortgagor, who in his sole discretion may be granted or withheld in Mortgagor's sole discretion, and thereafter may be withdrawn, incorporating a copy of the Mortgagor's agreement to an increase in the interest rate in the Agreement.

5.6. Sale or Lease of the Mortgaged Property. If Mortgagor contracts to sell or lease all or any portion of the Mortgaged Property or agrees to modify or terminate any now existing or future sales contract, lease, or other agreement concerning the Mortgaged Property, Mortgagor will furnish Mortgagor with a copy of the executed contract, lease or agreement within 15 days after the date of execution thereof.

## ARTICLE VI EVENTS OF DEFAULT

6. Events of Default. The term "Event of Default", as used in the Security Documents, shall mean the occurrence or happening, from time to time, of any one or more of the following:

- 6.1. **False Representations.** If Mortgagor engages in fraud or material misrepresentation in connection with the Credit Line.
- 6.2. **Performance of Obligations.** If Mortgagor defaults in the payment of the Indebtedness in accordance with the Agreement.
- 6.3. **Adverse Actions.** If Mortgagor's actions or inactions adversely affects the Mortgagor's Property or Mortgagor's rights thereto and interest therein.

## ARTICLE VII REMEDIES

7.1. Remedies. If an Event of Default shall occur and be continuing, Mortgagor may at its option, after providing Mortgagor with at least a 30 days advance notice of, and opportunity period to cure, the Event of Default, exercise any one or all of the following remedies:

7.1.1. Acceleration. Mortgagor may declare the unpaid portion of the Indebtedness to be immediately due and payable, without further notice or demand (which hereby is expressly waived by Mortgagor), whereupon the Indebtedness shall become immediately due and payable, anything in the Agreement or in the Security Documents to the contrary notwithstanding, provided further that the unpaid portion of the Indebtedness shall be immediately and automatically due and payable without action of any kind on the part of Mortgagor.

7.1.2. Enforcement of Mortgage. Mortgagor with or without entry, personally or by its agents or attorneys, insular as applicable, may:  
(a) sell the Mortgaged Property and all estate, and right, title and interest, claim and demand thereto, and right of redemption thereof, to the extent permitted by and pursuant to the procedure, provided by law, at one or more public and at all times and place upon such terms and after such notice thereof as may be required or permitted by law;

(b) institute proceedings for the complete foreclosure of this Mortgage;  
(c) take 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 Agreement 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 Mortgagor shall elect; and/or

(d) enforce the Mortgage in any other manner permitted under the laws of the State of Illinois.

7.1.3. Receiver. Mortgagor may apply to the court in which a proceeding is pending for the appointment of a receiver appointed to enter upon and take possession of the Mortgaged Property, collect the rents and profits therefrom and apply the same as the court may direct, such receiver to have all of the rights and powers permitted under the laws in which the Mortgaged Property is situated. The right to the appointment of such receiver shall be a matter of strict right without regard to the value or the incapacity of the Mortgaged Property or the solvency or insolvency of Mortgagor. The reasonable expenses, including receiver's fee, counsel's fees, costs and agent's commission incurred pursuant to the powers herein contained shall be borne hereby.

7.2. Other. If Mortgagor defaults in the due observance or performance of any of the Obligations in accordance with this Mortgage, Mortgagor may exercise any remedy available to Mortgagor under applicable law.

7.3. Remedies Cumulative, and Concurrent. The rights and remedies of Mortgagor as provided in the Security Documents shall be cumulative and may be pursued separately successively or together against Mortgagor, owner of the Mortgaged Property, or any one of them at the sole discretion of Mortgagor, and may be exercised as often as a lesion therefor shall arise, all to the maximum extent permitted by applicable laws, rules and regulations. If Mortgagor elects to proceed under one right or remedy under this Mortgage or the Agreement, Mortgagor may at any time cease proceeding under such right or remedy and proceed under any other right or remedy under this Mortgage or the Agreement. The failure to exercise any such right or remedy shall in no event be construed as a waiver or release thereof. Nothing in the Agreement or the Mortgage shall affect Mortgagor's obligations to pay the Indebtedness and perform the Obligations in accordance with the terms thereof.

7.4. Credit of Mortgagor. Upon any sale made under or by virtue of this Article VII, whether made under the power of sale herein granted or by virtue of judicial proceedings or of a judgment or decree of foreclosure or sale, Mortgagor may bid for and acquire the Mortgaged Property and in lieu of paying cash therefor may make settlement for the purchase price by crediting upon the Indebtedness the amount of Mortgagor's bid.

7.5. No Conditions Precedent to Exercise of Remedies. Neither Mortgagor nor any other person now or hereafter obligated for payment of all or any part of the Indebtedness shall be relieved of such obligation by reason of the failure of Mortgagor to comply with any request of mortgagor or any other person so obligated to take action to foreclose on this Mortgage or otherwise enforce any provisions of this Mortgage or the Agreement, or by reason of the release, regardless of consideration, of all or any part of the security held for an Indebtedness, or by reason of any agreement or stipulation between any subsequent owner of the Mortgaged Property and Mortgagor extending the time of payment or modifying the terms of this Mortgage or Agreement without first having obtained the consent of Mortgagor or such other person, and in the latter event Mortgagor and all such other persons shall continue to be liable to make payment according to the terms of any such extension or modification agreement, unless expressly released and discharged in writing by Mortgagor.

7.6. Waiver of Redemption, Statute and Marshaling. Mortgagor hereby waives and releases to the maximum extent permitted by the laws of the State of Illinois:

(a) all benefit that might accrue to Mortgagor by virtue of any present or future law exempting the Mortgaged Property or any part of the proceeds arising from any sale thereof, from attachment, levy or sale on execution, or, failing for any appraisal or valuation, stay of execution, exemption from civil process, redemption or extension of time for payment;

(b) any specifically required benefit or in any of the other Security Documents, in respect of Mortgagor's default or of Mortgagor's election to exercise of Mortgagor's right to redeem, or any option or remedy under the Agreement or the Security Documents, and

(c) any right to have the Mortgaged Property marshaled, provided that if any of the rights waived by Mortgagor in this paragraph affect or extend the time for sale to the Mortgaged Property, affect Mortgagor's rights to enforce this Mortgage or affect Mortgagor's right to redeem, Mortgagor shall have the right to elect to accept or reject the waiver of such right by Mortgagor, and such election may be made by Mortgagor at the time of or at any time prior to the entry of a decree or judgment of foreclosure in the court in which this Mortgage is being foreclosed.

7.7. Discontinuance of Proceedings. In case Mortgagor shall have proceeded to enforce any right under any of the Security Documents and such proceedings shall have been discontinued or abandoned for any reason, then in every such case, Mortgagor and Mortgagor shall be restored to their former positions and the rights, remedies and powers of Mortgagor shall continue as if no such proceedings had been taken.

## ARTICLE VIII CONDEMNATION

8.1. Condemnation. In the event of the taking by eminent domain proceedings or the like of any part or all of the Mortgaged Property by any federal, state, municipal or other governmental authority or agency thereof, all awards or other compensation for such taking shall be paid to Mortgagor for application in the inverse order of maturity on the Indebtedness, provided that no such application shall result in additional interest or have the effect of curing any Event of Default or extending the time for making any payment due hereunder or under the Agreement.

## ARTICLE IX MISCELLANEOUS

9.1. Survival of Warranties and Covenants. The warranties, representations, covenants and agreements set forth in the Security Documents shall survive the making of the loan and the execution and delivery of the Agreement, and shall continue in full force and effect until the Indebtedness shall have been paid in full.

9.2. Further Assurances. Mortgagor shall, upon the reasonable request of Mortgagor, execute, acknowledge and deliver such further instruments (including, without limitation, a declaration of no set off) and do such further acts as may be necessary, desirable or proper to carry out more effectively the purpose of the Security Documents and to subject to the lens thereof any property intended by the terms thereof to be covered thereby and any renewals, additions, substitutions, replacements or betterments thereto.

9.3. Recording and Filing. Mortgagor shall at Mortgagor's sole cost and expense, cause those Security Documents and all supplements thereto, for which constructive notice must be given to protect Mortgagor, at all times to be recorded and filed, and re-recorded and re-filed, in such manner and in such places as Mortgagor shall reasonably request, and shall pay all such recording, filing, re-recording, re-filing taxes, fees and other charges to the maximum extent permitted by the laws of the State of Illinois.

9.4. Loan Expenses. Mortgagor shall pay all applicable costs, expenses and fees set forth in the Agreement.

9.5. No Representation by Mortgagor. By accepting or approving anything required to be observed, performed or fulfilled or to be given to Mortgagor, pursuant to this Mortgage or the Commitment, including (but not limited to) any officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey or appraisal, Mortgagor shall not be deemed to have warranted or represented the sufficiency, legality, effectiveness or legal effect of the same, or of any term, provision or condition thereof, and such acceptance or approval thereof shall not be or constitute any warranty or representation with respect thereto by Mortgagor.

9.6. Incorporation of Agreement. Each and every term, covenant and provision contained in the Agreement is, by this reference, incorporated into this Mortgage as if fully set forth herein.

9.7. Waiver of Homestead. Mortgagor certifies that the Mortgaged Property is not occupied as a homestead or waives all rights and benefit which Mortgagor has or may have under the homestead exemption law of the State of Illinois.

9.8. Notice. Except for any notice required under applicable law to be given in another manner, any notice to Mortgagor provided for in this Mortgage shall be in writing and shall be deemed properly delivered three days after deposit thereof in any mail or branch United States Post Office, certified or First class United States Mail, postage prepaid, addressed as follows or at such other address as may be designated by notice as provided herein.

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3.4 **First Mortgage.** Mortgagor do hereby acknowledge that this First Mortgage is new style or in anyway, superior to this Mortgage is the First Mortgage.

3.5 **Taxes.** To the best of its knowledge, Mortgagor has filed all federal, state, county and municipal income tax returns required to have been filed by it and has paid all taxes which have become due pursuant to such returns, pursuant to any assessments received by it or pursuant to law, and the Mortgagor does not know of any basis for additional assessment in respect of such taxes or additional taxes.

3.6 **Litigation.** There is not now pending against or affecting the Mortgaged Property nor, to the knowledge of Mortgagor, is there threatened or contemplated, any action, suit or proceeding at law or in equity or by or before any administrative agency which if adversely determined, would materially impair or affect the value or operation of the Mortgaged Property.

3.7 **Environmental Indemnity.** Mortgagor shall indemnify and hold Mortgagee harmless against and from any and all loss, cost, damage, claim or expense (including, without limitation, any and all attorney's fees or expenses of litigation) incurred or suffered by Mortgagee on account of (i) the location on the Land or improvements of any chemical, material, substance, or contaminant (including, without limitation, oil, petroleum products, asbestos, urea-formaldehyde, term insulation, hazardous waste and/or toxic waste), the presence or storage of which or the exposure to which is prohibited, limited, or regulated by any federal, state, county, regional, or local governmental unit, agency or authority, or which presence, storage, or exposure may pose a hazard to health and safety or (ii) the failure by Mortgagor or any prior owner or occupant of the Land to comply with any applicable federal, state, county, regional or local environmental laws, regulations, and court or administrative orders.

## ARTICLE IV AFFIRMATIVE COVENANTS

4. **Affirmative Covenants.** Until the entire Indebtedness shall have been paid in full, Mortgagor hereby covenants and agrees as follows:

4.1 **Compliance With Laws.** Mortgagor shall promptly and faithfully comply with, conform to and obey or contest by appropriate proceedings in good faith all present, and use its best efforts as to future, laws, ordinances, rules, regulations and requirements of every duly constituted governmental authority or agency and of every board of fire underwriters having jurisdiction, or similar body exercising functions which may be applicable to it or to the Mortgaged Property or to the use and manner of use, occupancy, possession, operation, maintenance or reconstruction of the Mortgaged Property, whether or not such law, ordinance, rule, order, regulation or requirement shall necessitate structural, harness, improvements or interfere with the use or enjoyment of the Mortgaged Property.

4.2 **Payment of Impostions.** Mortgagor shall duly pay and discharge, or cause to be paid and discharged, the Impostions. Mortgagor may exercise the option to pay the same with installments.

4.3 **Repair.** Mortgagor shall keep the Mortgaged Property in good order and condition and make all necessary or appropriate repairs, replacements and renewals thereof.

### 4.4 **Insurance.**

(a) At all times during the term of this Mortgage, Mortgagor shall carry or cause to be carried policies insuring the Mortgaged Property against loss of rents or business interruption and against loss or damage by fire, theft, vandalism, mudflows, mudslides, hazards and such other risks as Mortgagee may from time to time require, including, without limitation, those risks included in the term "extended coverage." The amount of the coverage afforded by each of the Insurance Policies (the "Insurance Policies") shall be in amounts reasonably satisfactory to the Mortgagee and shall be sufficient to prevent any insured from becoming a co-insurer of a partial loss hereunder, but in any case no such amount shall be less than either (i) full replacement cost of all improvements or (ii) the outstanding Indebtedness, whichever amount is greater at the time of the loss or damage.

(b) All Insurance Policies shall, at all times, be in form, substance and with companies acceptable to Mortgagee, bear a non contributory first mortgage endorsement and such other endorsements in form and content acceptable to Mortgagee in favor of Mortgagee or as Mortgagee may request, and shall remain in force, with renewals and replacements thereof, which renewals and replacements shall be deposited with Mortgagee with evidence of payment of all premiums no later than fifteen (15) days prior to the expiration of any then existing Insurance Policy, until the Indebtedness is paid in full. Every Insurance Policy shall contain an agreement that no party thereto may terminate or modify the Insurance Policy without at least 15 days prior written notice to Mortgagee.

(c) Premiums on all Insurance Policies shall be paid by the Mortgagor and payment shall be made promptly and when due directly to the insurance carrier. Mortgagee may, but shall not be obligated to, make premium payments to prevent lapse or cancellation by reason of nonpayment of premium, and any amounts so paid by Mortgagee shall be treated as "Advances" in accordance with Paragraph 4.15.

4.5 **Application of Insurance Policy Proceeds.** In case of loss, damage or casualty to the Mortgaged Property, the proceeds of claims under the Insurance Policies covering casualty losses or damages shall be paid to Mortgagee for application, at the option of Mortgagee, either (i) to the Indebtedness, (in the inverse order of maturity) with the balance of such proceeds, if any, paid to Mortgagor; or (ii) to the restoration of the Mortgaged Property on such conditions and subject to such controls as Mortgagee may impose in its absolute discretion with the balance of such proceeds, if any, applied (in the inverse order of maturity) against such Indebtedness. Notwithstanding any other provision of this Mortgage or the Agreement, no application of Insurance Policy proceeds to the Indebtedness shall have the effect of curing any Event of Default or extending the time for making any payment hereunder or under the Agreement. Mortgagee shall not be held responsible for failure to collect any insurance proceeds due under the terms of any policy provided for herein regardless of the cause of such failure.

4.6 **Restoration Following Uninsured Casualty.** In the event of the happening of any casualty, of any kind or nature, ordinary or extraordinary, foreseen or unforeseen, not covered by any Insurance Policy resulting in damage to or destruction of the Mortgaged Property, Mortgagor shall give notice thereof to Mortgagee and Mortgagor shall promptly, at Mortgagor's sole cost and expense, commence and diligently continue to restore, repair, rebuild or alter the damaged or destroyed Mortgaged Property as nearly as possible to its value, condition and character immediately prior to such damage or destruction.

4.7 **Value.** Mortgagor shall use its best efforts to prevent any act or thing which might materially and adversely impair the value or usefulness of the Mortgaged Property.

4.8 **Performance of Other Agreements.** Mortgagor shall duly and punctually perform all covenants and agreements expressed as binding upon it under any agreement of any nature whatsoever binding upon it that involves the Mortgaged Property including, without limitation, all rules and regulations of a homeowners or condominium association if the Mortgaged Property is part of a condominium cooperative, phased development or other homeowners association.

4.9 **Inspection.** Mortgagor shall permit Mortgagee and parties designated by Mortgagee, at all reasonable times, to inspect the Mortgaged Property upon three (3) days' prior written notice.

4.10 **Hold Harmless.** Mortgagor shall, at Mortgagor's sole cost and expense, save, indemnify and hold the Mortgagee, its officers, officials, employees and agents, harmless from any injury, claim, demand, suit, judgment, execution, liability, debt, damage or penalty, hereinafter collectively referred to as "Claims," affecting the Mortgaged Property or the value of any of the Security Documents, arising out of, resulting from or alleged to arise out of, or result from, any action or inaction by Mortgagor, except as may be the direct result of Mortgagee's negligence. Mortgagor shall pay all expenses incurred by the Mortgagee in defending itself with regard to any and all Claims. These expenses shall include all out of pocket expenses, such as attorneys' and experts' fees, and shall also include the reasonable value of any services rendered by any employee of the Mortgagee.

4.11 **Expenses.** Mortgagor shall pay or reimburse Mortgagee for all reasonable attorney's fees, reasonably costs and expenses paid or incurred by Mortgagee in any action, proceeding or dispute of any kind in which Mortgagee is made a party or appears as plaintiff or defendant, involving any of the Security Documents, Mortgagor, or the Mortgaged Property, including, without limitation, to the foreclosure or other enforcement of this Mortgage, any condemnation involving the Mortgaged Property, any action to protect the security hereof, or any proceeding in probate or bankruptcy, and any such amounts paid or incurred by Mortgagee shall be treated as "Advances" in accordance with Paragraph 4.15.

4.12 **Payment of Indebtedness.** Mortgagor shall timely pay and discharge the Indebtedness or any part thereof in accordance with the terms and conditions of the Agreement, this Mortgage, and the Security Documents.

4.13 **Flood Disaster Protection Act.** Mortgagee shall take all steps necessary to comply with the provisions of the Flood Disaster Protection Act of 1973 as amended and, if required by Mortgagee, Mortgagor shall cause the Mortgaged Property to be insured pursuant to the provisions of such Act.

### 4.14 **First Mortgage.** Mortgagor shall comply with all terms, provisions, and conditions of the First Mortgage.

4.15 **Advances.** In the event Mortgagor fails to perform any act required of Mortgagor by any of the Security Documents or to pay when due any amount required to be paid by any of the Security Documents, Mortgagee may, but shall not be obligated to, make such payment or perform such act. Such payment or performance by Mortgagee shall not have the effect of curing any Event of Default or of extending the time for making any payment due hereunder or under the Agreement. All amounts so paid by Mortgagee, together with all expenses incurred in connection therewith, shall be deemed advances ("Advances") under this Mortgage, shall be immediately due and payable and shall be added to the Indebtedness. Advances shall bear interest from the date expended at the rate specified in the Agreement and shall be secured by this Mortgage as though originally a part of the principal amount of the Indebtedness.

## ARTICLE V NEGATIVE COVENANTS

### 5. **Negative Covenants.**

Until the entire Indebtedness shall have been paid in full, Mortgagor covenants and agrees as follows:

5.1 **Use Violations.** Mortgagor shall not use the Mortgaged Property or allow the same to be used or occupied for any unlawful purpose or in violation of any permit or certificate, or any law, ordinance, regulation or restrictive covenant, covering or affecting the use or occupancy thereof, or suffer any act to be done or any condition to exist on the Mortgaged Property or any article to be brought thereon, that may be dangerous, unless safeguarded as required by law or that may in law, constitute a nuisance, public or private.

5.2 **Alterations.** Mortgagor shall not commit or knowingly permit any waste of the Mortgaged Property or make or permit to be made any material alterations or additions to the Mortgaged Property that would have the effect of materially diminishing the value thereof or that will in any way materially increase the risk of any ordinary fire or other hazard arising out of construction or operation thereof.

5.3 **Replacement of Fixtures, Improvements and Personal Property.** Mortgagor shall not permit any of the Fixtures or Improvements to be removed at any time from the Land, without the prior written consent of Mortgagee, unless actually replaced by an article of equal or greater suitability and value and owned by Mortgagor.

5.4 **Other Liens.** Mortgagor shall not, without the prior written consent of Mortgagee, create or permit to be created or to remain, any mortgage, pledge, lien, encumbrance or charge on, security interest in, or conditional sale of or other title retention agreement on (whether prior or subsequent to the liens of the Security Documents) the Mortgaged Property or income therefrom other than the Security Documents and the First Mortgage.

5.5 **Transfer of Title.** As a material inducement to Mortgagee to make the loan evidenced by the Agreement and secured by this Mortgage, Mortgagor has made representations to Mortgagee concerning the abilities of the undersigned in constructing, managing and operating the Mortgaged Property, which representations have been and will be relied upon by Mortgagee in funding this loan. Therefore, Mortgagor covenants and agrees that it will not sell, convey, transfer, alienate, pledge, encumber or permit to be sold, conveyed, transferred, alienated, pledged or encumbered the Mortgaged Property and will not convey or assign any

If to the Mortgagor

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John Fortuna

Ramona E. Fortuna

1000 Carlow Drive

Des Plaines, Illinois 60016

If to the Mortgagee

American National Bank of Melrose Park

1836 N. Broadway

Melrose Park, Illinois 60160

Attention: Home Equity Loan Division

3-2-16-0040

- 3.10. **Covenants Running With the Land.** All covenants contained in this Mortgage shall run with the Land.
- 3.10. **Successors and Assigns.** All of the terms of this Mortgage shall apply to and be binding upon, and unto to the benefit of, the successors and assigns of Mortgagor and Mortgagee, respectively, and all persons claiming under or through them, provided that nothing in this Paragraph shall be construed to permit a transfer, conveyance or assignment other than as expressly permitted by this Mortgage.
- 3.11. **Multiple Mortgagors.** Mortgagor's covenants and agreements hereunder shall be joint, several and prima. Any Mortgagor who co-signs this Mortgage but does not execute the Agreement, or is co-signing this Mortgage only to mortgage, grant and convey the Mortgaged Property, (b) is not personally obligated to pay the indebtedness, and (c) agrees that Mortgagee and any other Mortgagor may agree to extend, modify, forbear or make any accommodations with regard to the terms of this Mortgage or the Agreement without that Mortgagor's consent.
- 3.12. **Severability.** In case any one or more of the Obligations or the provisions of this Mortgage or of the Agreement shall be determined to be invalid, illegal or unenforceable in any respect, the validity of the remaining Obligations or provisions of this Mortgage shall be in no way affected, prejudiced or disturbed thereby.
- 3.13. **Modification.** This Mortgage may not be changed, waived, discharged or terminated orally, but only by an instrument or instruments in writing signed by the parties against whom enforcement of the change, waiver, discharge or termination is asserted.
- 3.14. **Applicable Law.** This Mortgage shall be governed by and construed according to the laws of the state of Illinois.
- 3.15. **Strict Performance.** Any failure by Mortgagee to insist upon strict performance by Mortgagor of any of the terms and provisions of this Mortgage or any of the Security Documents shall not be deemed to be a waiver of any of the terms or provisions of this Mortgage or any of the Security Documents, and Mortgagee shall have the right thereafter to insist upon strict performance by Mortgagor of any and all of them.
- 3.16. **Headings.** The article headings and the section and subsection entitlements hereof are inserted for convenience of reference only, and shall in no way alter or modify the text of such articles, sections and subsections.
- 3.17. **Riders.** If one or more riders are attached to and made a part of this Mortgage, the covenants and agreements for each such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Mortgage.
- 3.18. When all obligations of the Mortgage are satisfied, Mortgagee shall be entitled to charge a reasonable fee for the preparation of a release for the mortgage.

IN WITNESS WHEREOF, the Mortgagors has executed this instrument the day and year first above written:

X John Fortuna  
X Ramona E. Fortuna

Witness

Gloria A. Tomaselto  
Vice President

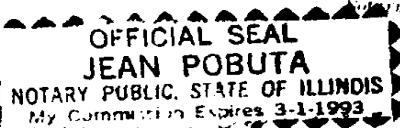
This document was prepared by and upon recording please mail to:

Tina Wood  
American National Bank of Melrose Park  
4159 Old River Road  
Schiller Park, Illinois 60176

STATE OF ILLINOIS \_\_\_\_\_ SS  
COUNTY OF COOK \_\_\_\_\_

I, a Notary Public in and for said County in the State of Illinois, DO HEREBY CERTIFY THAT, John Fortuna, 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 they signed and delivered said instrument as their own free and voluntary act for the uses and purposes herein set forth.

GIVEN under my hand and Notarial Seal this 28th day of January, AD 1992



My Commission Expires

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