

UNOFFICIAL COPY



9 2 2 5 4 6 8 8

March 1988

First National Bank
of Mount Prospect

One First Bank Plaza
Mount Prospect, Illinois 60056
708/392-1600

WHEN RECORDED MAIL TO:
FIRST NATIONAL BANK OF MT. PROSPECT

Account No. 6100-5137

92254688

Space above this line for Recorder's use

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 _____

Henry E. Buesing, Jr. and Janis L. Buesing, married to each other

(herein "Borrower"), and First National Bank of Mt. Prospect, a national banking association, whose address is One First Bank Plaza, Mount Prospect, Illinois 60056 (herein, "Lender").

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 Lender and Lender's successors and assigns, the following described property located in the Village _____ of _____

Wheeling County of Cook State of Illinois.

Lot 227 in Hollywood Ridge Unit 5, being a subdivision in Sections 3 and 4, Township 42 North, Range 11, East of the Third Principal Meridian, in Cook County, Illinois.

PIN#03-04-406-030

COOK COUNTY, ILLINOIS
FILED FOR RECORD

1992 APR 20 PM 12:24

92254688

92254688

which has the address of 132 Coral Lane

Wheeling Illinois 60090 (herein "Property Address");

TO HAVE AND TO HOLD such property unto Lender and Lender'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 to Property, and rents (subject however to the rights and authorities, given herein to Lender 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 (or the leasehold estate if this Mortgage is on a leasehold) 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 UCC for the purpose of creating a security interest in such property, which Borrower hereby grants to Lender a Secured Party (as such term is defined in the UCC);

4/50

R4-710-C
RE TITLE SERVICES #

UNOFFICIAL COPY

To Secure to Lender on condition of the repayment of the REVOLVING LINE OF CREDIT indebtedness evidenced by a First National Bank of Mount Prospect Equity Line of Credit 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 U.S. \$25,000.00 or so much thereof 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 five (5) 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 Credit Documents contemplate, and this Mortgage permits and secures, future advances up to the principal amount of the note. Such loans or advances constitute "revolving credit" as defined in Ch. 17, Para. 6405 of the Ill. Rev. Stats. All future advances made from the date hereof will have the same priority as the original loan evidenced by the Note and secured by this Mortgage.

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. Specifically, and without limitation of the foregoing, if this Mortgage is given with respect to a leasehold estate held by Borrower, the Borrower subsequently acquires a fee interest in the real property, the lien of this Mortgage shall attach to and include the fee interest acquired by Borrower.

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 Lender may, prior to the expiration of the terms of the Note, cancel future advances thereunder any/or require repayment of the outstanding balance under the Note. In this regard, the Note provisions set forth verbatim below relate to the variable interest rate and the Lender's option to require repayment prior to expiration of the term of the Note or to cancel future advances for reasons other than default by the Borrower.

The first four paragraphs of paragraph 3 of the Note, entitled "INTEREST (VARIABLE RATE)," provide as follows: The annual interest rate applied to the outstanding principal balance on this Note is calculated daily and is equal to the Prime Rate for that month plus one percentage points. "Prime Rate" means the rate of interest, or the highest rate if more than one, published in The Wall Street Journal in the "Money Rates" column as the "Prime Rate" on the last business day of each month for the preceding business day. "Business Day" means any day other than a Saturday or Sunday or general legal holiday on which The Wall Street Journal is not published. The effective date of any change in the Prime Rate Index will be the first day of the next billing cycle after the date of the change in the Prime Rate Index. The Prime Rate Index may fluctuate hereunder from month to month with or without notice by the Bank to the undersigned. Any change in the Prime Rate Index will be applicable to all the outstanding indebtedness hereunder, whether from past or future principal advances hereunder. In the event The Wall Street Journal discontinues the publication of the "Prime Rate" in the "Money Rates" column, the Bank will select a comparable interest rate index and will notify the undersigned of the Index selected. Decreases in the annual interest rate are mandatory as the Prime Rate declines. Conversely, if the Prime Rate increases so will the annual interest rate; however, the annual interest rate may not exceed 18%.

In the event that any payment is not paid within 25 days after it is due, a late penalty charge equal to ten percent (10%) of the amount of the payment, with a minimum of \$25.00 will be due. In the event that an Event of Default has occurred hereunder, the annual interest rate applied to the daily balance for purposes of determining the finance charges shall be the annual interest rate described in the two preceding paragraphs of this Paragraph Three, plus three percentage points (not to exceed a total of 21%).

I understand that Note Holder will pay, on a daily basis and on my behalf, the checks for advances obtained by me under this Note as a result of charges and checks paid by them on each day in amounts not to exceed my credit line. Interest for any such payments by Note Holder on my behalf will be charged beginning on the date checks are presented by payments, and will continue until such payment has been repaid in full."

92254688

UNOFFICIAL COPY

Paragraph 5 of the Note, entitled "FREEZING, TERMINATING, REDUCING THE LINE," provides in its entirety as follows:

"Upon the occurrence of an Event of Default hereunder," Note Holder can either (a) cancel my right to any future advances under my line of credit, without requiring accelerated repayment of my outstanding principal balance (that is, "freeze" the line.), or (b) cancel my right to any future advances and also require accelerated repayment of my outstanding principal balance plus accrued interest and other charges imposed on my credit line (that is, "terminate" the line.)

"Additionally, Note Holder can (a) freeze the line and (b) reduce the maximum amount to be advanced hereunder during any period in which (i) the value of my principal dwelling which secures the indebtedness evidenced by the Note is significantly less than the original appraised value of the dwelling which was submitted to the Note Holder, (ii) Note Holder has reason to believe that I will be unable to comply with the repayment requirements hereunder due to a material change in my financial circumstances, (iii) Note Holder is precluded by government action from imposing the annual percentage rate provided for herein, (iv) any government action is in effect which adversely affects the priority of the mortgage interest given to Note Holder, to the extent that the value of the Note Holder's interest in the property is less than 120 percent of the amount of the applicable credit limit under this Note, (v) a regulatory agency has notified Note Holder that continued advances would constitute an unsafe and unsound practice, or (vi) the maximum annual percentage rate has been reached."

Note Holder may freeze or terminate the line pursuant to this paragraph 5 by giving me written notice of its election to do so. The notice must be sent registered or certified mail, addressed to me at the Property's address (or such other address as I have given Note Holder). The notice will be deemed to have been given on the date it is deposited in the mail regardless of when I actually receive it.

If Note Holder elects to freeze the line or reduce the credit limit, the freezing of my right to any future advances or the reduction in the amount of the line will be effective when Note Holder so elects, provided that Note Holder shall mail or deliver written notice of that action to me not later than three (3) business days after the action is taken and that notice shall contain the specific reasons for the action. If the notice specifies that Note Holder is terminating my line, rather than merely freezing it, I will be obligated to repay my outstanding principal balance, and all accrued interest and other charges imposed on my credit line, upon receipt of the notice. If the notice specifies that Note Holder is freezing my line, rather than terminating it, 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."

COVENANTS. Borrower and Lender covenant and agree as follows:

92254688

1. **PAYMENT OF PRINCIPAL AND INTEREST.** Borrower shall promptly pay when due, in accordance with and pursuant to 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 Lender under the Note and this Mortgage shall be applied by Lender first in payment of amounts payable to Lender by Borrower under paragraphs 6 and 27 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 encumbrances, charges, loans and liens (other than any prior first mortgage or deed of trust) on the Property which may attain any priority over this Mortgage, and leasehold payments or ground rents, if any. Borrower shall deliver to Lender, upon its request, receipts evidencing such payment.

4. **HAZARD INSURANCE.** Borrower shall, at its costs, 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 Lender may require. Borrower shall maintain Hazard insurance for the entire term of the Note or such other periods as Lender 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 Lender; provided that such approval shall not be unreasonably withheld. All insurance policies and renewals thereof shall be in a form acceptable to Lender and shall include a standard mortgage clause in favor of and in a form acceptable to Lender. Lender shall have the right to hold the policies and renewals thereof, subject to the terms of any mortgage, deed of trust or other security agreement with a lien which has or appears to have any priority over this Mortgage. If Borrower makes the premium payment directly, Borrower shall promptly furnish to Lender all renewal notices and, if requested by Lender, all receipts of paid premiums. If policies and renewals are held by any other person, Borrower shall supply copies of such to Lender within ten (10) calendar days after issuance.

UNOFFICIAL COPY

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

Subject to the rights 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 Lender under any Hazard insurance policy may, at Lender's sole discretion, either be applied to the indebtedness secured by this Mortgage (after payment of all reasonable costs, expenses and attorneys' fees necessarily paid or incurred by Lender and Borrower in this connection) and in such order as Lender may determine or be released to Borrower for use in repairing or reconstructing the Property, and Lender 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 Lender in writing within thirty (30) calendar days from the date notice is mailed by Lender to Borrower that the insurance carrier offers to settle a claim for insurance benefits, Lender is irrevocably authorized to settle the claim and to collect and apply the insurance proceeds to Lender'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 Lender, all right, title and interest of Borrower in and to any insurance policies and in and to the proceeds thereof resulting from damage to the Property prior to such sale or acquisition shall become the property of Lender to the extent of the sums secured by this Mortgage immediately prior to such sale or acquisition.

5. HAZARDOUS MATERIALS:

(a) Definitions. For the purpose of this Mortgage, Borrower and Lender agree that, unless the context otherwise specifies or requires, the following terms shall have the meaning herein specified:

(i) "Hazardous Materials" shall mean (a) any "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et. seq.), as amended from time to time, and regulations promulgated thereunder; (b) any "hazardous substance" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9601 et. seq.) ("CERCLA"), as amended from time to time, and regulations promulgated thereunder; (c) asbestos; (d) polychlorinated biphenyls; (e) any substance and presence of which on the Property is prohibited by any Government Requirements; and (f) any other substance which by any Governmental Requirement requires special handling in its collection, storage, treatment or disposal.

(ii) "Hazardous Materials Contamination" shall mean the contamination (whether presently existing or hereafter occurring) of the Improvements, facilities, soil, ground water, air or other elements on, or of, the Property by Hazardous Materials, or the contamination of the buildings, facilities, soil, ground water, air or other elements on, or of, any other property as a result of Hazardous Materials at any time (whether before or after the date of this Mortgage) emanating from the Property.

(b) **Borrower's Warranties:** Borrower hereby represents and warrants that no Hazardous Materials are now located on the Property and that neither Borrower nor any other person has ever caused or permitted any Hazardous Materials to be placed, held, located or disposed of, on, under or at the Property or any part thereof. No part of the Property has ever been used as a manufacturing, storage or dump site for Hazardous Materials, nor is any part of the Property affected by any Hazardous Materials Contamination. To the best of the Borrower's knowledge and belief, no property adjoining the Property has ever been used as a manufacturing, storage or dump site for Hazardous Materials nor is any other property adjoining the Property affected by Hazardous Materials Contamination.

(c) **Borrower's Covenants:** Borrower agrees to (a) give notice to Lender immediately upon the Borrower acquiring knowledge of the presence of any Hazardous Materials on the Property or of any Hazardous Materials Contamination with a full description thereof; (b) promptly comply with any Governmental Requirement requiring the removal, treatment or disposal of such Hazardous Materials or Hazardous Materials Contamination and provide Lender with satisfactory evidence of such compliance; and (c) provide Lender, within thirty (30) days after demand by the Lender, with a bond letter of credit or similar financial assurance evidencing to the Lender's satisfaction that the necessary funds are available to pay the cost of removing, treating or disposing of such Hazardous Materials or Hazardous Materials Contamination and discharging any assessments which may be established on the Property as a result thereof.

(d) **Site Assessments:** Lender (by itself or its employees or agents) at any time and from time to time, either prior to or after the occurrence of an Event of Default, may contract with the services of persons (the "Site Reviewers") to perform environmental site assessments ("Site Assessments") on the Property for the purpose of determining whether there exists on the Property any environmental condition which could result in any liability, cost of expense to the owner or occupier of such Property arising under any state, federal or local law, rule or regulation relating to Hazardous Materials. The Site Assessment may be performed at any time or times, upon reasonable notice, and under reasonable conditions established by Borrower which do not impede the performance of the Site Assessment. The Site Reviewers are hereby authorized to enter upon the Property for such purposes. The Site Reviewers are further authorized to perform both above and below ground testing for environmental damage or the presence of Hazardous Materials on the Property and such other tests on the Property as may be necessary to conduct the Site Assessment in the reasonable opinion of the Site Reviewers. Borrower will supply to the Site Reviewers such historical and operational information regarding the Property as may be reasonably requested by the Site Reviewers to facilitate the Site Assessment and will make available for meetings with the Site Reviewers appropriate personnel having knowledge of such matters. On request, Lender shall make the results of such Site Assessment fully available to Borrower, which (prior to an Event of Default) may at its election participate under reasonable procedures in the direction of such Site Assessment and the description of tasks of the Site Reviewers. The cost of performing such Site Assessment shall be paid by Borrower upon demand of Lender, and any such obligations shall constitute additional indebtedness secured by this Mortgage.

(e) **Indemnification:** Regardless of whether any Site Assessments are conducted hereunder, any Event of Default shall have occurred and be continuing, or any remedies in respect of the Property are exercised by Lender, Borrower shall defend, indemnify and hold harmless Lender from any and all liabilities (including strict liability), actions, demands, penalties, losses, costs or expenses (including, without limitation, reasonable attorney's fees and remedial costs), suits, costs of any settlement or judgment and claims of any and every kind whatsoever which may now or in the future (whether before or after the release of this Mortgage) be paid, incurred or suffered by or asserted against, Lender by any person or entity or governmental agency for, with respect to, or as a direct or indirect result of, the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission, discharging or release from the Property of any Hazardous Materials or Hazardous Materials Contamination or arise out of or result from the environmental condition of the Property or the applicability of any Governmental Requirement relating to Hazardous Materials (including, without limitation, CERCLA or any so-called federal, state or local "Superfund" or "Superfund" laws, statute, law, ordinance, code, rule, regulation, order or decree), regardless of whether or not caused by or within the control of Lender. The representations, covenants and warranties contained in this paragraph 5 shall survive the release of this Mortgage.

92254688

(f) **Lender's Right to Remove Hazardous Materials.** Lender shall have the right but not the obligation, without in any way limiting Lender's other rights and remedies under this Mortgage, to enter onto the Property or to take such other actions as it deems necessary or advisable to clean up, remove, resolve or minimize the impact or, or otherwise deal with, any Hazardous Materials or Hazardous Materials Contamination on the Property following receipt of any notice from any person or entity asserting the existence of any Hazardous Materials or Hazardous Materials Contamination pertaining to the Property, or any part thereof which, if true, could result in an order, suit, imposition of a lien on the Property, or other action and/or which, in Lender's sole opinion, could jeopardize Lender's security under this Mortgage. All reasonable costs and expenses paid or incurred by Lender in the exercise of any such rights shall be secured by this Mortgage and shall be payable by Borrower upon demand.

6. PRESERVATION AND MAINTENANCE OF PROPERTY; LEASEHOLDS; CONDOMINIUMS; PLANNED UNIT DEVELOPMENTS. Borrower shall use, improve and maintain the Property in compliance with applicable laws, statutes, ordinances, orders, requirements, decrees or regulations, shall keep the Property in good condition and repair, including the repair or restoration of any improvements on the Property which may be damaged or destroyed, shall not commit or permit waste or permit impairment or deterioration of the Property, and shall fully and promptly comply with the provisions of any lease if this Mortgage is on a leasehold. If this Mortgage is on a unit in a condominium or a planned unit development, Borrower shall promptly perform all of Borrower's obligations under the declaration or covenants creating or governing the condominium or planned unit development, 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 this Mortgage, the covenants and agreements of such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Mortgage as if the rider were a part hereof.

7. PROTECTION OF LENDER'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 Lender's interest in the Property or the rights or powers of Lender, then Lender without demand upon Borrower but upon notice to Borrower pursuant to paragraph 12 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 Lender deems necessary to protect the security of this Mortgage. If Lender has required mortgage insurance as a condition of making the loan secured by this Mortgage, Borrower shall pay the premiums required to maintain such insurance in effect until such time as the requirement for such insurance terminates in accordance with Borrower's and Lender's written agreement or applicable law.

UNOFFICIAL COPY

Any amounts disbursed by Lender pursuant to this paragraph 7, with interest thereon at the rate from time to time in effect under the Note, shall become additional indebtedness of Borrower secured by this Mortgage. Unless Borrower and Lender agree in writing, to other terms of payment, such amount shall be payable upon notice from lender to Borrower requesting payment thereof. Nothing contained in this paragraph 7 shall require Lender to incur any expense or take any action hereunder and any action taken shall not release Borrower from any obligation in this Mortgage.

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

9. 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 Lender, subject to the terms of any mortgage, deed of trust or other security agreement with a lien which has priority over this Mortgage. Borrower agrees to execute such further documents as may be required by the condemnation authority to effectuate this paragraph. Lender 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 damages shall be made without Lender's prior written approval.

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

11. SUCCESSORS AND ASSIGNS BOUND; JOINT AND SEVERAL LIABILITY; CO-SIGNERS; CAPTIONS. The covenants and agreement herein contained shall bind, and the rights hereunder shall inure to, the respective successors, heirs, legatees, devisees and assigns of Lender and Borrower, subject to the provisions of paragraph 17 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 Lender 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.

12. 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 Lender as provided herein; and (b) any notice to Lender shall be given by registered or certified mail to Lender at First National Bank of Mt. Prospect, One First Bank Plaza, Mount Prospect, Illinois 60056 or to such other address as Lender may designate by written notice to Borrower (or to Borrower's successors, heirs, legatees, devisees and assigns which have provided Lender with written notice of their existence and address) as provided herein. Any notice provided for in this Mortgage shall be deemed to have been given on the date hand delivery is actually made or the date notice is deposited into the U.S. mail system as registered or certified mail addressed as provided in this paragraph 12.

13. GOVERNING LAW; SEVERABILITY. The state and local laws applicable to this Mortgage shall be the laws of the jurisdiction in which the Property is located. The foregoing sentence shall not limit the applicability of federal law to this Mortgage. 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.

UNOFFICIAL COPY

92254688

14. **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.

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

16. 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 Lender gives written notice to 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 Lender, during that grace period, if any, with evidence reasonable 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 12 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 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 maintain sufficient funds in his/her designated account to cover required payments by automatic debit when due under the Credit Documents on time (30 day grace period); (2) Borrower fails to keep the covenants and other promises made in paragraphs 2 and 5 of the Agreement (no grace period); (3) Lender receives actual knowledge that Borrower omitted material information on Borrower's credit application (no grace period) or Borrower committed fraud or material misrepresentation in connection with this lending relationship; (4) 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 or (ii) such transfer, in Lender's reasonable judgment, materially impairs the security for the line of credit described in the Credit Documents (no grace period); (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) days grace period in which to remove the lien, claim of lien or encumbrance); (8) Borrower defaults on 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 writ of attachment against the Property (no grace period); (9) Borrower fails to keep any other covenant contained in any of the Credit Documents not otherwise specified in this paragraph 16 (ten (10) day grace period, unless the failure is by its nature not curable, in which case no period or, if another grace period is specified in the Credit Documents, that grace period shall prevail); (10) Borrower fails to keep the improvements on the property insured pursuant to paragraph 4 of the Mortgage (10 day grace period); (11) Borrower sells or transfers all or any part of the Property securing Borrower's line of credit without Lender's prior written consent (no grace period); or Borrower moves out of the Property and it is no longer Borrower's principal place of residence (no grace period); (12) Borrower fails to submit updated financial information to Lender upon Lender's request (30 day grace period beginning on date of our request); (13) Borrower acts, or fails to act in a way which adversely affects the collateral or any right of Note Holder in that collateral (no grace period).

17. **TRANSFER OF 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, 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 Lender's prior written consent, Lender shall be entitled to immediately accelerate the amounts due under the Note and declare all indebtedness secured by this Mortgage to be immediately due and payable. Any such action by Borrower or beneficiary of the Trust shall constitute an immediate 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 lease affecting the Property, shall constitute a separate Event of Default.

92254688

UNOFFICIAL COPY

As an alternative to declaring all sums secured by this Mortgage to be immediately due and payable, Lender may waive its option to accelerate and agree in writing, prior to close of the sale or transfer or the promise to sell or transfer, to the transferee's assumption of the outstanding obligation under the Note, on the terms satisfactory to Lender, subject to Lender's right, described in paragraph 6 of the Note, to cancel further advances or accelerate the outstanding balance of the line of credit. Lender's acceptance of the transferee's assumption of the obligation under the Note shall not release Borrower from any of its obligations under the Note and Mortgage, and Borrower shall assume the status of the guarantor of the Note until paid in full. Borrower understands that Lender will not permit the assumption of the outstanding balance under the Note in any event and will declare the entire outstanding principal balance plus accrued interest and other charges due to be immediately due and payable (see paragraph 18 hereof), unless (a) Borrower has submitted to Lender a written acknowledgment from the transferee that the transferee has received (i) a copy of each of the Credit Documents and (ii) notice of the amount of Borrower's outstanding principal balance on the line of credit; (b) Borrower has submitted to Lender a written acknowledgment from transferee that transferee has received such material and understands that Lender's security interest reflected by this Mortgage will remain on the Property until the entire outstanding principal balance of Borrower's line of credit as of the date of such sale or transfer or promise, plus any subsequent borrowings made under Borrower's line of credit before Lender has actual knowledge of the sale or transfer, together with accrued interest and other charges, is paid in full; (c) Borrower causes to be submitted to Lender from the transferee a loan application as required by Lender so that Lender may evaluate the creditworthiness of the transferee as if a new loan were being made to the transferee; and (d) Lender does not, in its sole option, believe that (i) its security will be impaired or (ii) a breach of any promise or agreement in this Mortgage will occur or (iii) such transfer will permit the acceleration of any loan which has priority in right of payment over the indebtedness evidenced by the Note. Further advances on the line of credit will cease as of the date of the written assumption agreement signed by transferee and Lender. The transferee and Borrower shall retain the right to repay the Note before the Due Date, in whole or in part, at any time without premium or penalty.

18. ACCELERATION; REMEDIES (INCLUDING FREEZING THE LINE). Upon the existence of an Event of Default, Lender may, at its sole option, terminate the line, declare all of the sums secured by this Mortgage to be immediately due and payable without further demand, and invoke any remedies permitted by applicable law. Lender shall be entitled to collect all reasonable costs and expenses incurred in pursuing the remedies provided in this paragraph 18, including, but not limited to, reasonable attorney's fees.

As additional specific protection, notwithstanding any other term of this Mortgage, Lender, without declaring or asserting an Event of Default or invoking any of its remedies pertaining to Events of Default, may, immediately and without notice, freeze the line upon the occurrence of any event enumerated in paragraphs 16 and 17 of this Mortgage or allowed under the Note including without limitation Lender's receipt of notice from any source of a lien, claim of lien or encumbrance, either superior or inferior to the lien of this Mortgage. Notice of any such freeze shall be given in accordance with the provisions of paragraph 12 of this Mortgage. Freezing the line will not preclude Lender from substantially exercising any right or remedy set forth herein or in any of the Credit Documents.

19. ASSIGNMENT OF RENTS; APPOINTMENT OF RECEIVER; LENDER IN POSSESSION. As additional security hereunder, Borrower hereby assigns to Lender the rents of the Property, provided that prior to acceleration under paragraph 18 hereof or the occurrence of an Event of Default hereunder or abandonment of the Property, Borrower shall have the right to collect and retain such rents as they become due and payable.

Upon acceleration under paragraph 18 hereof, or abandonment, Lender, at any time without notice, in person, by agent or by judicially appointed receiver, and without regard to the adequacy of any security for the indebtedness secured by this Mortgage, shall be entitled to enter upon, take possession of, and manage the Property, and in its own name sue for or collect the rents of the Property, including those past due. All rents collected by Lender or the receiver shall be applied first to payment of the costs of operation and management of the Property and collection of rents, including, but not limited to, receiver's fees, premiums on receiver's bonds and reasonable attorneys' fees, and then to the sums secured by this Mortgage. Lender and the receiver shall be liable to account only for those rents actually received. The entering upon the taking possession of the Property and the collection and applications 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.

20. RELEASE. Upon payment and discharge of all sums by this Mortgage and termination of the Account, this Mortgage shall become null and void and Lender shall release this Mortgage with a \$50.00 charge to Borrower. Borrower shall pay all costs of recordation, if any.

21. REQUEST FOR NOTICES. Borrower requests that copies of any notice of default be addressed to Borrower and sent to the Property Address. Lender 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 Lender's address, as set forth on page one of this Mortgage.

22. 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.

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

UNOFFICIAL COPY

9 2 2 5 4 6 8 8

24. **ACTUAL KNOWLEDGE.** For purposes of this Mortgage and each of the other Credit Documents, Lender will not be deemed to have received actual knowledge of information required to be conveyed to Lender in writing by Borrower until the date of actual receipt of such information at First National Bank of Mt. Prospect, One First Bank Plaza, Mount Prospect, Illinois 60058 (or such other address specified by Lender to Borrower). Such date shall be conclusively determined by reference to the "Received" date stamped on such written notice by Lender or Lender's agent. With regard to other events or information not provided by Borrower under the Credit Documents, Lender will be deemed to have actual knowledge of such event or information as of the date Lender receives a written notice of such event or information from a source Lender 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 Lender or Lender's agent.

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

26. **WAIVER OF STATUTORY RIGHTS.** Borrower shall not and will not apply for or avail itself of any homestead, appraisement, 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.

27. **EXPENSE OF LITIGATION.** In any suit to foreclose the lien of this Mortgage or enforce any other remedy of the Lender under this Mortgage, the Agreement, or the Note there shall be allowed and included, as additional indebtedness in the judgment or decree, all expenditures and expenses which may be paid or incurred by or on behalf of Borrower 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 to title, title searches and examinations, title insurance policies, Torrens certificates, and similar data and assurances with respect to title as Lender may deem reasonably necessary either to prosecute such suit or to evidence to 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 Lender in any litigation or proceeding affecting this Mortgage, the Note or the Property or in preparation for the commencement or defense of any proceeding, shall be immediately due and payable by Borrower, with interest thereon at the default interest rate.

28. **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.

29. **TRUSTEE EXCULPATION.** If this Mortgage is executed by a Trust, _____, Trustee executes this Mortgage as Trustee as aforesaid, in the exercise of the power and authority conferred upon and vested in it as such trustee, and it is expressly understood and agreed by the mortgages 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 his waiver shall in no way affect the personal liability of any co-maker, co-signer, endorser or guarantor of said Note.

92254688

UNOFFICIAL COPY

9 2 2 5 4 6 8 8

IF BORROWER IS A TRUST:

not personally but solely as trustee in aforesaid

By : _____

Its _____
(Title)

ATTEST:

Its _____
(Title)

92254688

STATE OF ILLINOIS

COUNTY OF _____) SS

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that _____

_____, President of _____

corporation, and _____, Secretary

of said corporation, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such

_____, President and _____

Secretary, respectively, appeared before me this day

in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary acts, and as the free and

voluntary act of said corporation, as Trustee, for the uses and purposes therein set forth, and the said _____

Secretary did also then and there acknowledge that he, as custodian of the

corporate seal of said corporation, did affix the said corporate seal of said corporation to said instrument as his own free and voluntary act,

and as the free and voluntary act of said corporation, as Trustee, for the uses and purposes therein set forth

Given under my hand and official seal, this _____ day of _____, 19 _____

Notary Public

Commission expires:

THIS INSTRUMENT PREPARED BY AND MAIL TO:

A Howard
FIRST NATIONAL BANK OF MOUNT PROSPECT
One First Bank Plaza
Mt. Prospect, Illinois 60056



UNOFFICIAL COPY

92254688

Property of Cook County Clerk's Office