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COOK COUNTY, ILL. 60607 94793716

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*W* SECOND MORTGAGE

MADE as of the thirtieth day of August, 1994, between Cole-Taylor Bank as Trustee under the Trust Agreement dated August 26, 1994, and known as Trust No. 94-6113, with offices at 850 W. Jackson, Chicago, IL. 60607, (hereinafter referred to as "Mortgagor"), and Frank T. Wheby of 1319 Grant Street, Evanston, IL. 60201, (hereinafter referred to as the "Mortgagee")

*272*

WITNESSETH:

WHEREAS, Mortgagor is justly indebted to Mortgagee for money borrowed, as evidenced by a certain Promissory Note (hereinafter called the "Note") of even date herewith, the terms, covenants, and conditions of which are specifically incorporated herein by reference, duly executed and delivered by Mortgagor, and Mortgagor's beneficiary, payable to the order of Mortgagee at his office aforesaid, or at such other place as may be designated in writing by the holder of said Note, in the principal sum of Twenty Six Thousand Five Hundred and No/100 (\$26,500.00) advanced by the Mortgagee to the Mortgagor, with interest thereon from the date hereof at the rate set forth therein, such principal and interest being payable at the times and in the manner as therein more particularly set forth. The Note secured by this Mortgage shall be due and payable on or before September 1, 2001.

NOW, THEREFORE, in consideration of the principal advances made by the Mortgagee to the Mortgagor and other valuable consideration, and for the purpose of securing the prompt repayment by Mortgagor of said indebtedness and all other sums payable hereunder and under said Note and also for the purpose of securing the performance of and compliance with all of the terms, covenants, conditions, and warranties herein contained and contained in the Note, the Mortgagor does hereby Mortgage unto the Mortgagee, its successors and assigns all the property lying and being in the CITY OF EVANSTON, COUNTY OF COOK, STATE OF ILLINOIS as more fully described in Exhibit A attached hereto and made a part hereof.

TOGETHER WITH all interest which Mortgagor has not or may hereafter acquire in or to said property and in and to:

- (a) all easements and rights of way appurtenant thereto;
- (b) all buildings, structures, improvements, fixtures, appliances, equipment, and other articles of real or personal property of every kind and nature (other than consumable goods), whether or not physically attached or affixed to said property and now or hereafter installed or placed thereon, and used in connection with any future operation thereof, it being intended and agreed that such items be conclusively deemed to be affixed to and to be part of the property that is mortgaged hereby.

94793716

ALSO TOGETHER WITH all rents, issues, profits, royalties, tools, earnings, and incomes therefrom and installments of money payable pursuant to any agreement for sale of said property or any part thereof. (For the purpose of this instrument including all provisions incorporated by reference herein, all of the foregoing described property, property rights, and interest shall be referred to as the "Property" or the "Premises"). As used hereinafter, the terms "First Mortgage" shall mean the mortgage or mortgages, respectively referred to in Paragraph 4 hereof, together with all amendments, modifications, and supplements thereof.

TO HAVE AND TO HOLD the same unto the Mortgagee, its successors and assigns forever, subject as aforesaid.

AND MORTGAGOR represents, warrants, and covenants that it is the lawful owner of the Property free from all encumbrances and liens whatsoever, except the first mortgage of even date herewith in favor of Home Savings of America FSB as Mortgagee.

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TO PROTECT THE SECURITY OF THIS MORTGAGE, MORTGAGOR AGREES AS FOLLOWS:

1. **REPAIR AND MAINTENANCE OF PROPERTY.** Mortgagor shall keep the Property in good condition and repair, not to substantially alter, remove, or demolish any buildings thereon; to restore promptly and in good workmanlike manner any buildings or other improvements which may be damaged or destroyed; to comply with all laws affecting the Property or requiring any alterations or improvements to be made thereon; not to commit or permit waste upon; and to do all other acts that from the character or use of such property may be reasonably necessary to keep the Property in the same condition (reasonable wear and tear excepted) as at the date of this Mortgage.
2. **EVENTS OF DEFAULT.** It shall be an Event of Default if Mortgagor or any subsequent owner of the Property: (a) fails to make any payment or interest or principal on its due date and such failure to make such payment continues for 10 days; or (b) takes any action prohibited by this Mortgage; or (c) fails to perform any obligation secured or required by this Mortgage; or (d) files a voluntary petition in bankruptcy or shall be adjudicated a bankrupt or insolvent, or shall file any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief; or (e) shall seek or consent to the appointment of any trustee, receiver, or liquidator of all or any part of the Property, or of any or all of the revenues, rents, issues, or profits thereof or shall make any general assignment for the benefit of creditors; or (f) shall admit in writing its inability to pay its debts generally as they become due; or (g) has entered against it an order, judgment, or decree approving a petition filed against it seeking any reorganization, dissolution, or similar relief under any statute, law, or regulation relating to relief for debtors, which shall remain in effect for 60 days; or (h) has entered against it a writ of execution or attachment or any similar process against all or any part or interest in the Property, or any judgments involving monetary damages shall be entered against it which shall become a lien on the Property or any portion thereof or interest therein which remains in effect for 60 days after its entry or levy; (i) fails to comply with the terms and conditions of the First Mortgage; (j) enters into an agreement to transfer or transfers, assigns, sells, or conveys any interest in the property without the prior consent of the Mortgagee, hereof.
3. **REMEDIES UPON DEFAULT.**
  - A. If an Event of Default shall occur, Mortgagee may declare all indebtedness secured hereby to be immediately due and payable and the same shall thereupon become due and payable without any presentment, demand, protest or notice of any kind. Thereafter Mortgagee may:
    - (i) Either in person or by agent, with or without bringing any action or proceeding, enter upon and take possession of the Property, or any part thereof, in its own name, and do any acts which it deems necessary or desirable to preserve the value, marketability, or rentability of the Property, or any part thereof or interest therein, increase the income therefrom with or without taking possession of the Property, sue for or otherwise collect the rents, issues and profits thereof, including those past due and unpaid. The entering upon and taking possession of the Property shall not cure or waive any default or notice of default hereunder or invalidate any act done in response to such default and Mortgagee shall be entitled to exercise every right provided for in this Mortgage or by law upon

94793716

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occurrence of any Event of Default, including the right to exercise any available power to sale;

- (ii) Commence an action to foreclose this Mortgage, appoint a receiver, or specifically enforce any of the covenants hereof;
  - (iii) Exercise any or all of the remedies available to a secured party under the applicable Uniform Commercial Code.
3. All expenditures and expenses as may be incurred in the protection of the Property and the maintenance of the lien or this Mortgage, including fees of any attorney employed by Mortgagee in any litigation or proceeding affecting this Mortgage, or the Note shall be immediately due and payable by Mortgagor, with interest thereon at <sup>ONE PERCENT</sup> 1% per month and shall be secured by this Mortgage.
4. ~~SUBORDINATION.~~ OR EVEN OTHER FIRST MORTGAGE OBTAINED BY MORTGAGOR WHICH SHALL NOT EXCEED 80% OF FAIR MARKET VALUE AS DETERMINED BY LENDER This Mortgage is made subject and subordinate to the First Mortgage in favor of Home Savings of America, FSB. Mortgagor shall comply with all terms and conditions of the First Mortgage. Any provisions contained in this Mortgage which may not be permitted under the terms of the First Mortgage shall be void as against the Mortgagee of the First Mortgage.
5. **OBLIGATIONS OF MORTGAGOR.** The Mortgagor shall pay when due all interest and principal due on the first Mortgage.
6. **NO WAIVER OR MODIFICATION UNLESS IN WRITING.** No modification or waiver by Mortgagee or any right under this shall be effective unless in writing. Waiver by Mortgagee of any right granted to Mortgagee under this Mortgage or of any provision of this Mortgage as to any transaction or occurrence shall not be deemed a waiver as to any future transaction or occurrence. By accepting payment of any sum secured hereby after its due date, or by making any payment or performing any act on behalf of Mortgagor that Mortgagor was obligated hereunder but failed to make or perform, or by adding any payment so made by Mortgagee to the indebtedness secured hereby, Mortgagee does not waive its right to require prompt payment when due of all sums so secured or to required prompt performance of all other acts required hereunder, or to declare a default for failure so to pay.
7. **CREATION OF SECURITY INTEREST.** Mortgagor hereby grant Mortgagee a security interest in the personal property located on or at the Property, including without limitation any and all property of similar type or kind hereafter located on or at the Property for the purpose of securing all obligations of Mortgagor contained in the Note and this Mortgage.
8. **GENERAL PROVISIONS.** (a) this Mortgage applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors, and assigns. (b) The term "Mortgagee shall mean the owner and holder, including a pledgee, of any note secured hereby, whether or not named as Mortgagee herein. (c) Wherever the context so requires, the masculine gender includes the feminine and neuter, the singular number includes the plural, and vice versa. (d) Captions and paragraphs headings used herein are for convenience only, are not a part of this Mortgage, and shall not be used in construing it.
9. **RECEIVER.** Upon the commencement of any action to enforce any remedy available hereunder, the Mortgagee shall be entitled as a matter of right without notice, without bond, without regard to the solvency of the Mortgagor, or waste of the Property or adequacy of the security of the Property, to have a receiver appointed for the Property with such powers and rights as may be incident to the making of such appointment and the Mortgagor does hereby irrevocably consent to such appointment.

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