

UNOFFICIAL COPY

THIS INSTRUMENT PREPARED BY
PAM VUJSTICH

WHEN RECORDED MAIL TO:
HOME SAVINGS OF AMERICA 94110739
LOAN SERVICE CENTER
P.O. BOX 60015
CITY OF INDUSTRY, CALIFORNIA 91716-0015

ALL NOTICES TO LENDER SHALL BE MAILED
OR DELIVERED TO THE ABOVE ADDRESS.

**Mortgage and Assignment of Rents
ADJUSTABLE INTEREST RATE LOAN**

LOAN NO. 16-45562-8

This Mortgage, made this 17th day of JANUARY, 1994, between

ORLANDO C. DAVID AND MILA C. DAVID, HUSBAND AND WIFE

94110739

herein called BORROWER, whose address is 42W361 IRVING PARK ROAD
(number and street)

MEDINA (city)

IL (state)

60157 (zip code)

and

and HOME SAVINGS OF AMERICA, F.S.B., a corporation herein called LENDER, whose address is 4900 Rivergrade Road, Irwindale, California 91706

WITNESSETH: Borrower hereby grants, conveys, mortgages and warrants to Lender the real property legally described as follows:

THE NORTH 1/2 OF LOT 4 AND ALL OF LOT 3 IN BLOCK 107 IN MAYWOOD IN SECTIONS 2, 11 AND 14, TOWNSHIP 32 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

COMMONLY KNOWN AS 705 SOUTH 6TH AVENUE, MAYWOOD, IL. 60157 DEPT-11 RECORD-7 \$27.50
T#6666 TRAN 3184 02/02/94 13:54:00
#5893 * - 94 - 110739
COOK COUNTY RECORDER

FIN: 15-11-543-002

Together with all interest which Borrower now has or may hereafter acquire in or to said property, and in and to (a) all easements and rights of way appurtenant thereto; and (b) all buildings, structures, improvements, fixtures and appurtenances now or hereafter placed thereon, including, but not limited to, all apparatus and equipment, whether or not physically affixed to the land or any building, used to provide or supply air-cooling, air-conditioning, heat, gas, water, light, power, refrigeration, ventilation, laundry, drying, dishwashing, garbage disposal or other services; and all waste vent systems, antennas, pool equipment, window coverings, drapes and drapery rods, carpeting and floor covering, awnings, ranges, ovens, water heaters and attached cabinets; it being intended and agreed that such items be conclusively deemed to be affixed to and to be part of the real property that is conveyed hereby; and (c) all water and water rights (whether or not appurtenant) Borrower agrees to execute and deliver, from time to time, such further instruments as may be requested by Lender to confirm the lien of this Mortgage on any such properties. The properties conveyed to Lender hereunder are hereinafter referred to as "such property."

The Borrower absolutely and irrevocably grants, transfers and assigns to Lender the rents, income, issues, and profits of all property covered by this Mortgage.

FOR THE PURPOSE OF SECURING:

- (1) Payment of the sum of \$ 97,500.00 with interest thereon, according to the terms of a promissory note of even date herewith and having a final maturity date of FEBRUARY 10, 2024 made by Borrower, payable to Lender or order, and all modifications, extensions or renewals thereof; (2) Payment of such sums as may be incurred, paid out, or advanced by Lender, or may otherwise be due to Lender, under any provision of this Mortgage and all modifications, extensions or renewals thereof; (3) Performance of each agreement of Borrower contained herein or incorporated herein by reference or contained in any papers executed by Borrower relating to the loan secured hereby; (4) Performance, if the loan secured hereby or any part thereof is for the purpose of constructing improvements on such property, of each provision or agreement of Borrower contained in any building loan agreement or other agreement between Borrower and Lender relating to such property; (5) The performance and keeping by Borrower of each of the covenants and agreements required to be kept and performed by Borrower pursuant to the terms of any lease and any and all other instruments creating Borrower's interest in or defining Borrower's right in respect to such property; (6) Compliance by Borrower, with each and every monetary provision to be performed by Borrower under any declaration of covenants, conditions and restrictions pertaining to such property or any declaration of condominium ownership and upon written request of Lender, the enforcement by Borrower of any covenant to pay maintenance or other charges, if the same have not been paid or valid legal steps taken to enforce such payment within 90 days after such written request is made; (7) All Lender's option, payment, with interest thereon, of any other present or future indebtedness or obligation of the borrower or of any successor in interest of Borrower to such property due to Lender, whether created directly or acquired by absolute or contingent assignment, whether due or not, whether otherwise secured or not, or whether existing at the time of the execution of this Mortgage or arising thereafter, the exercise of such option to be evidenced by a notice in writing to Borrower or any successor in interest of Borrower; (8) Performance of all agreements of Borrower to pay fees and charges to the Lender whether or not herein set forth; (9) Payment of charges, as allowed by law when such charges are made, for any statement regarding the obligation secured hereby.

Handwritten notes: 4400538, 24-90-7130

Property of Cook County Clerks Office

Handwritten note: 27.50

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TO PROTECT THE SECURITY OF THIS MORTGAGE, BORROWER AGREES:

1. Construction or Improvements. To complete in good and workmanlike manner any building or improvement or repair (including the replacement of any roof, gutter, downspout, or other exterior or interior finish) or any other work on the property, to pay when due all costs and liabilities incurred therefor, and to complete the same within the time specified in the contract or to extend the time by written agreement with Lender. Borrower shall also be responsible for the cost of any materials, labor, and other items necessary for the completion of such work.

2. Repair and Maintenance of Property. To keep such property in good condition and repair, not to substantially alter, remove or demolish any part of the property, not to encumber the property with any lien, mortgage, or other security interest, and to do all other acts that from time to time may be necessary to keep such property in the same condition (reasonable wear and tear excepted).

3. Fire and Casualty Insurance. To provide and maintain in force at all times fire and other types of insurance with respect to such property, to pay when due all premiums therefor, and to provide evidence of such insurance to Lender in form and content as may be required by Lender. Lender shall be entitled to receive a copy of the policy and to be named as an additional insured under the policy. Lender shall also be entitled to receive a copy of the policy and to be named as an additional insured under the policy.

4. Life, Health or Accidental Insurance. If Borrower shall maintain an accident, health or life insurance policy, Lender shall be entitled to receive a copy of the policy and to be named as an additional insured under the policy. Lender shall also be entitled to receive a copy of the policy and to be named as an additional insured under the policy.

5. Taxes and Other Sums Due. To pay, when due, all taxes, assessments, charges and liens, with interest, on such property, or any part thereof, which are levied or assessed against the property, or any part thereof, and to provide evidence of such payment to Lender. Lender shall also be entitled to receive a copy of the tax return and to be named as an additional insured under the policy.

6. Disposition of the Proceeds of Any Insurance, Condemnation or Other Recovery. The amount received by Lender from any insurance, condemnation or other recovery shall be applied to the payment of the debt secured by this mortgage, and the balance, if any, shall be paid to Borrower. Lender shall also be entitled to receive a copy of the proceeds and to be named as an additional insured under the policy.

7. Disposition of the Proceeds of Any Insurance, Condemnation or Other Recovery. The amount received by Lender from any insurance, condemnation or other recovery shall be applied to the payment of the debt secured by this mortgage, and the balance, if any, shall be paid to Borrower. Lender shall also be entitled to receive a copy of the proceeds and to be named as an additional insured under the policy.

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(11) **Prepayment Charge.** Should any note or obligation secured hereby require Borrower to pay a fee in connection with the prepayment of any of the indebtedness secured hereby, to pay such fee to the extent permitted by applicable law, notwithstanding the fact that Borrower shall have defaulted in any obligation secured hereby and Lender, by reason thereof, shall have declared all sums secured hereby immediately due and payable.

(12) **Failure of Borrower to Comply with Mortgage.** Should Borrower fail to make any payment, or fail to do any act required in this Mortgage, or fail to perform any obligation secured by this Mortgage, or do any act Borrower agreed not to do, Borrower shall be in default under this Mortgage. Lender, *at its option*, may, *without* obligation to do and without notice to or demand upon Borrower and without releasing Borrower from any obligation hereof, and without constituting the validity or amount of the same, may (a) pay or do the same in such manner and to such extent as it may deem necessary to protect the security hereof, Lender being authorized to enter upon such property for such purposes; (b) pay, purchase, contest or compromise any encumbrance, charge or lien, which in its judgment is or appears to be prior or superior hereto; and (c) in exercising any such power pay necessary expenses. Borrower agrees to repay any amount so expended on demand of Lender.

(13) **Sums Advanced to Bear Interest and To Be Added to Indebtedness.** To pay immediately upon demand any sums advanced or paid by Lender or Borrower under any clause or provision of this Mortgage. Any such sum, until so repaid, shall be secured herein and bear interest from the date it was advanced or paid at the same interest rate, as may be adjusted from time to time, as such indebtedness, and shall such sum and interest thereon be secured by this Mortgage.

(14) **Application of Funds.** Lender shall have the right at its sole discretion to direct the manner in which payments or proceeds shall be applied upon or allocated among the various items constituting Borrower's indebtedness or obligations secured hereby.

(15) **Obligation of Borrower Joint and Several.** If more than one person is named as Borrower, each obligation of Borrower shall be the joint and several obligation of each such person.

(16) **Acceleration Clause; Right of Lender to Declare All Sums Due on any Transfer, Etc.** Lender shall have the right, at its option, to declare any indebtedness and obligations secured hereby, irrespective of the maturity date specified in any note or agreement evidencing the same due and payable within 30 days after such declaration if: (a) Borrower or any successor in interest to Borrower of such property sells, conveys, mortgages, conveys or otherwise conveys such property or any part thereof, or suffers the title or any interest therein to be lost, whether voluntarily or involuntarily or leases such property or any part thereof for a term of more than 11 years, or changes or permits to be changed the character or use of such property, or drills or extracts or enters into a lease for the drilling or extracting of gas or other hydrocarbon, oil, coal, or any mineral of any kind or character on such property; or (b) Borrower is a partnership and the interest of a general partner is assigned or transferred; or (c) Borrower is a corporation and more than 25% of the corporate stock thereof is sold, transferred or assigned during a 12 month period; or (d) Borrower is a trust and there is a change of beneficial interest with respect to more than 25% of such property; or (e) Borrower has made any material misrepresentation or failed to disclose any material fact in those certain instances stated or whether representations and disclosures made by Borrower in order to induce Lender to enter into the transaction evidenced by the promissory note or notes or agreements, which this Mortgage secures.

(17) **No Waivers by Lender.** No waiver by Lender of any right under this Mortgage shall be effective unless in writing. Waiver by Lender of any right granted by Lender under this Mortgage as to 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, Borrower shall not be deemed to have waived or agreed to waive its right to require prompt payment when due of all other sums so secured or to require prompt performance of all other acts required hereunder, or to declare a default for failure so to pay such other sums or to perform such other acts.

(18) **Modification in Writing.** This Mortgage cannot be changed or modified except as otherwise provided in this Mortgage or by agreement in writing signed by Borrower, or any successor in interest to Borrower, and Lender.

(19) **Right to Collect and Receive Rents and Profits.** Notwithstanding any other provisions hereof, Lender hereby grants permission to Borrower to collect and receive the rents, income, issues, and profits of such property as they become due and payable, but Lender reserves the right to take such rents, income, issues, and profits, if any, by notice in writing to Borrower, in which Borrower at his last known address is given a 10-day period in which Borrower automatically shall be revoked upon default by Borrower in payment of any indebtedness secured hereby, and the performance of any agreement hereunder. On any such default, Lender may at any time without notice, either in person, by agent, or by power to be appointed by the court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of such property, or any part thereof, make, cancel, enforce or modify leases, obtain and eject tenants, set or modify rents, in its own name see for the use collect the rents, income, issues and profits thereof, including those past due and unpaid, and apply the same less costs and expenses of preparation and collection, upon any indebtedness secured hereby and in so far as Lender may determine, and except for such application, Lender shall not be liable to any person for the collection or non-collection of any rents, income, issues or profits, nor the failure to assert or enforce any of the foregoing rights. The entering upon and taking possession of such property, the collection of such rents, income, issues or profits, the doing of other acts herein authorized, and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

(20) **Remedies.** No remedy herein provided shall be exclusive of any other remedy herein or now or hereafter existing by law, but shall be cumulative. Every power or remedy hereby given to Borrower or to Lender or to which either of them may be otherwise entitled, may be exercised from time to time and as often as may be deemed expedient by them, and either of them may exercise inconsistent remedies, if Lender holds any additional security for any obligation secured hereby, it may enforce the sale thereof at its option, either before, contemporaneously with, or after any Mortgagee's sale is made hereunder, and in any default of Borrower, Lender may, at its option, offset against any indebtedness owing by it to Borrower, the whole or any part of the indebtedness secured hereby. The Lender is hereby authorized and empowered at its option, without any obligation so to do, and without affecting the obligations hereof, to apply toward the payment of any indebtedness secured hereby, any and all sums or money, or credits of or belonging to Borrower and which the Lender may have in its possession or under its control, including, among other things, any moneys held by Lender under paragraph (6) hereof.

In order to assure the definiteness and certainty of the rights and obligations herein provided, Borrower waives any and all rights of offset which Borrower now or hereafter may have against Lender, of claims, and no offset made by Lender shall relieve Borrower from paying in fullments on the obligations secured hereby as they become due.

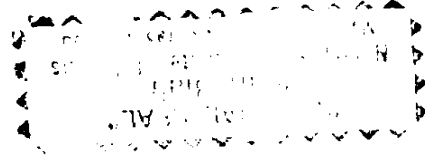
(21) **Foreclosure of Mortgage.** When the indebtedness hereby secured shall become due whether by acceleration or otherwise, the Lender shall have the right to foreclose the lien hereof. In any suit to foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the decree of sale all expenditures and expenses which may be paid or incurred by or on behalf of Lender for attorney's fees, appraiser's fees, outlays for documentary and expert evidence, stenographer's charges, publication cost and costs of preparing and advertising the notice of sale or other documents to the insurance of such fees, charges and costs may be estimated as to items to be expended after the entry of the decree and Lender may determine as 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 the value of the Property. All expenditures and expenses of the nature of this paragraph mentioned shall become so much additional indebtedness secured hereby and shall be immediately due and payable with interest thereon at the rate specified in the Note. Such expenditures and expenses shall include expenditures made in connection with (a) any proceedings to which Lender shall be a party, either as plaintiff, claimant or defendant, by reason of this Mortgage or any indebtedness hereby secured, (b) preparation for the commencement of any suit for foreclosure hereof after accrual of such right to foreclose whether or not actually commenced, (c) preparation for the defense of any threatened suit or proceeding which might affect the Property or the security hereof, whether or not actually commenced, (d) any efforts for collection of any past due indebtedness secured hereby. The proceeds of any foreclosure sale of the Property shall be distributed and applied in the following order of priority: first, on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in this paragraph hereof; second, all other items which under the terms hereof constitute indebtedness secured by this Mortgage; third, any surplus to Borrower, his legal representatives or assigns, as their rights may appear.

(22) **Appointment of Receiver.** Upon or at any time after the filing of a complaint to foreclose this Mortgage the court in which such complaint filed may appoint a receiver of the property or may appoint Lender as Mortgagee in possession. Such appointment may be made either before or after sale without notice, without regard to the solvency or insolvency at the time of application for such receiver, of the person or persons, if any, liable for the payment of the indebtedness secured hereby and without regard to the then value of the property. Whether the same shall be then occupied as a home for or not. Such receiver or Mortgagee in possession shall have power to collect the rents, issues, and profits of the premises, including the proceeds of such foreclosure suit, as well as during any further times when Borrower, his legal heirs or assigns, except for the appointment of such receiver, would be entitled to collect such rents, issues and profits, and all other powers which may be necessary or reasonable for the receiver in possession, control, management and operation of the property during the whole or part of the suit hereof. The court may authorize the receiver or Mortgagee in possession to apply the net proceeds of the sale of the property to the payment of the indebtedness and other sums secured hereby, or in payment of any tax, special assessment or other liability which may be a lien hereof or superior to a decree foreclosing this Mortgage, provided such and such proceeds are not first used in case of a judicial sale of the property, or so much thereof as may then be affected by this Mortgage in the said sale.

(23) **Waiver of Statute of Limitations.** Time is of the essence as to all Borrower's obligations hereunder, and to the extent permitted by law, Borrower waives any present or future statute of limitation with respect to any debt, demand or obligation secured hereby in any action or proceeding for the purpose of enforcing this Mortgage or any rights or remedies hereunder.

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Notary Public

My commission expires

Given under my hand and seal of office this _____ day of _____, 19____.

me this day in person and acknowledged that _____ signed and delivered the same instrument as _____ free and voluntary performing known to me to be the same person whose name is _____

_____ a notary public in and for said county and state, do hereby certify that _____ County ss _____ State of Illinois

Signature of Borrower
L. Frank ...
MILAN ...

BORROWER REQUESTS THAT A COPY OF ANY NOTICE OF DEFAULT AND A NOTICE OF SALE HEREUNDER BE MAILED TO BORROWER AT THE ADDRESS HEREINAbove SET FORTH.

24. **Future Advances.** Upon request of Borrower, Lender at Lender's option prior to release of this Mortgage, may make Future Advances. Such Future Advances, with interest thereon, shall be secured by this Mortgage when evidenced by promissory notes stating that said notes are secured hereby. At no time shall the principal amount of the indebtedness secured by this Mortgage, not including sums advanced in accordance herewith to protect the security of this Mortgage, exceed the original amount of the Note.

25. **Inspection and Business Records.** Lender at any time during the continuation of this Mortgage may enter and inspect such property, or any interest therein, or any other property that in the event that such property is now or hereafter used for commercial or residential purposes, or any other purpose, may be used by Lender, Borrower will promptly deliver to Lender such certified financial statements and profit and loss statements, and other information as may be required by Lender, which will be in form and content prepared according to generally accepted accounting principles and practices, which statements shall cover the financial operations relating to such property, and shall be prepared by Lender, when requested by Lender, in writing such further additional information as Lender may reasonably require.

26. **Governing Law, Jurisdiction, Venue, and Arbitration.** This Mortgage is made pursuant to and shall be construed and governed by the laws of the State of Illinois. The parties hereto agree that any dispute, controversy, or claim of any kind, nature, or description, arising out of or in connection with this Mortgage, shall be referred to and finally resolved by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules. The arbitration shall take place in Cook County, Illinois. The arbitration award shall be final and binding on the parties. The arbitration shall not affect only those provisions of this Mortgage which are subject to arbitration. The remaining provisions of this Mortgage shall remain in full force and effect.

27. **Waiver of Homestead.** Borrower hereby waives all right of homestead exemption in such property located in Cook County, Illinois, and the borrower is deemed to have waived the homestead exemption when it is recorded in the public records of Cook County, Illinois, and the borrower is deemed to have waived the homestead exemption when it is recorded in the public records of Cook County, Illinois.

28. **Notice to Borrower.** Lender shall be deemed to have given notice to the Borrower at the address of the Borrower as it appears in Lender's records, or at the address of the Borrower as it appears in the public records of Cook County, Illinois, or at the address of the Borrower as it appears in the public records of Cook County, Illinois.

29. **General Provisions.** This Mortgage applies to the benefit of and binds all parties hereto, their heirs, legatees, assigns, and assigns, and their heirs, legatees, assigns, and assigns. The term "Lender" shall mean the owner and holder (including a pledgee) of any promissory notes, whether or not assigned, which are secured by this Mortgage. The term "Borrower" shall mean the person who is obligated to pay the principal and interest on the promissory notes secured by this Mortgage. The term "Mortgage" shall mean this Mortgage and all instruments which are recorded in the public records of Cook County, Illinois, and which are intended to secure the promissory notes secured by this Mortgage. The term "Mortgage Provisions" shall mean the provisions of this Mortgage which relate to the security of the promissory notes secured by this Mortgage. The term "Adjustable Rate Mortgage Provisions" shall mean the provisions of this Mortgage which relate to the adjustable rate of interest on the promissory notes secured by this Mortgage. The term "Interest" shall mean the interest on the promissory notes secured by this Mortgage, including any late charges, penalties, and other charges. The term "Principal" shall mean the principal amount of the promissory notes secured by this Mortgage, including any late charges, penalties, and other charges. The term "Mortgage" shall mean this Mortgage and all instruments which are recorded in the public records of Cook County, Illinois, and which are intended to secure the promissory notes secured by this Mortgage. The term "Mortgage Provisions" shall mean the provisions of this Mortgage which relate to the security of the promissory notes secured by this Mortgage. The term "Adjustable Rate Mortgage Provisions" shall mean the provisions of this Mortgage which relate to the adjustable rate of interest on the promissory notes secured by this Mortgage. The term "Interest" shall mean the interest on the promissory notes secured by this Mortgage, including any late charges, penalties, and other charges. The term "Principal" shall mean the principal amount of the promissory notes secured by this Mortgage, including any late charges, penalties, and other charges.

30. **Assignment of Rights.** Borrower hereby assigns to Lender all of its rights, title, and interest in and to the promissory notes secured by this Mortgage, and all of its rights, title, and interest in and to the property which is the subject of this Mortgage, and all of its rights, title, and interest in and to the proceeds of the sale of such property. Lender shall be deemed to have accepted the assignment of such rights, title, and interest when it records this Mortgage in the public records of Cook County, Illinois.

31. **Misrepresentation of Nondisclosure.** Borrower has made certain written representations and disclosures in order to induce Lender to make the loan secured by this Mortgage, and in the event that Borrower has made any such misrepresentation or nondisclosure, Lender shall be deemed to have given notice to the Borrower at the address of the Borrower as it appears in Lender's records, or at the address of the Borrower as it appears in the public records of Cook County, Illinois, or at the address of the Borrower as it appears in the public records of Cook County, Illinois.

32. **Waiver of Defenses.** Borrower hereby waives all defenses, claims, and counterclaims, and all rights, title, and interest in and to the promissory notes secured by this Mortgage, and all of its rights, title, and interest in and to the property which is the subject of this Mortgage, and all of its rights, title, and interest in and to the proceeds of the sale of such property. Lender shall be deemed to have accepted the waiver of such defenses, claims, and counterclaims, and all rights, title, and interest when it records this Mortgage in the public records of Cook County, Illinois.

33. **Assignment of Rights.** Borrower hereby assigns to Lender all of its rights, title, and interest in and to the promissory notes secured by this Mortgage, and all of its rights, title, and interest in and to the property which is the subject of this Mortgage, and all of its rights, title, and interest in and to the proceeds of the sale of such property. Lender shall be deemed to have accepted the assignment of such rights, title, and interest when it records this Mortgage in the public records of Cook County, Illinois.

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35. **Waiver of Defenses.** Borrower hereby waives all defenses, claims, and counterclaims, and all rights, title, and interest in and to the promissory notes secured by this Mortgage, and all of its rights, title, and interest in and to the property which is the subject of this Mortgage, and all of its rights, title, and interest in and to the proceeds of the sale of such property. Lender shall be deemed to have accepted the waiver of such defenses, claims, and counterclaims, and all rights, title, and interest when it records this Mortgage in the public records of Cook County, Illinois.

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